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Report of the Human Rights Committee

General Assembly

Official Records • Forty-seventh Session
Supplement No. 40 (A/47/40)

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As of 31 July 1992, the closing date of the forty-fifth session of the Human Rights Committee, 112 States had ratified or acceded to the International Covenant on Civil and Political Rights 1/ and 66 States had ratified or acceded to the Optional Protocol to the Covenant, both of which were adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9, respectively. Also as of 31 July 1992, 36 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant, which came into force on 28 March 1979. The Second Optional Protocol, aiming at the abolition of the death penalty, which was adopted and opened for signature, ratification or accession by the General Assembly by its resolution 44/128 of 15 December 1989, entered into force on 11 July 1991 in accordance with the provisions of its article 8. As of 31 July 1992, there were 11 States parties to the Second Optional Protocol.

2. A list of States parties to the Covenant and to the Optional Protocols, with an indication of those that have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

3. Reservations and other declarations made by a number of States parties in respect of the Covenant and/or the Optional Protocols are set out in document CCPR/C/2/Rev.3 and in notifications deposited with the Secretary-General.

B. Sessions and agenda

4. The Human Rights Committee has held three sessions since the adoption of its last annual report. 1/ The forty-third session (1092nd to 1120th meetings) was held at the United Nations Office at Geneva from 21 October to 8 November 1991, the forty-fourth session (1121st to 1148th meetings) was held at United Nations Headquarters, New York, from 23 March to 10 April 1992 and the forty-fifth session (1149th to 1176th meetings) was held at the United Nations Office at Geneva from 13 to 31 July 1992. The agendas of the sessions are shown in annex III to the present report.

C. Membership and attendance

5. The membership remained the same as during 1991. A list of the members of the Committee, as well as officers, is given in annex II to the present report.

6. All the members attended the forty-third session of the Committee except Mr. Ndiaye, Mr. Serrano Caldera and Mr. Wako. Mrs. Higgins and Mr. Mavrommatis attended only part of that session. All the members attended the forty-fourth session except Mr. Wako and Mr. Lallah. Mrs. Higgins and Mr. Serrano Caldera attended only part of that session. All the members

attended the forty-fifth session except Mr. Fodor, Mr. Serrano Caldera and Mr. Wako. Mr. Dimitrijevic, Mr. Lallah and Mr. Mavrommatis attended only part of that session.

D. Election of officers

7. At its 1122nd meeting, held on 23 March 1992, the Committee elected Mr. Omran El Shafei for the office of Vice-Chairman, to replace Mr. Wako, who had relinquished his post.

E. Working groups

8. In accordance with rules 62 and 89 of its rules of procedure, the Committee established working groups to meet before its forty-third, forty-fourth and forty-fifth sessions.

9. The working group established under rule 89 was entrusted with the task of making recommendations to the Committee regarding communications under the Optional Protocol. At the forty-third session, the working group was composed of Miss Chanet and Mr. Müllerson, Mr. Prado Vallejo, Mr. Sadi and Mr. Wennergren. It met at the United Nations Office at Geneva from 14 to 18 October 1991 and elected Miss Chanet as its Chairman/Rapporteur. At the forty-fourth session, the working group was composed of Mr. El Shafei, Mr. Mavrommatis, Mr. Müllerson, Mr. Prado Vallejo and Mr. Wennergren. It met at United Nations Headquarters, New York, from 16 to 20 March 1992 and elected Mr. El Shafei as its Chairman/Rapporteur. At the forty-fifth session, the working group was composed of Mr. Mavrommatis, Mr. Ndiaye, Mr. Pocar, Mr. Prado Vallejo and Mr. Sadi. It met at the United Nations Office at Geneva from 6 to 10 July 1992 and elected Mr. Sadi as its Chairman/Rapporteur.

10. The working group established under rule 62 was mandated to prepare concise lists of issues concerning second and third periodic reports scheduled for consideration at the Committee's forty-third to forty-fifth sessions, and to consider any draft general comments that might be put before it. Additionally, the working groups that met before the forty-third and forty-fourth sessions were requested to review the Committee's procedures under article 40 of the Covenant in the light of the discussion on that subject at the Committee's thirty-ninth and fortieth sessions. The working groups that met before the forty-fourth and forty-fifth sessions were also requested to consider an issue relating to article 14, paragraphs 5 and 7, of the Covenant raised by a State party during the consideration of its report at the forty-third session. At the forty-third session, the working group was composed of Mr. Dimitrijevic, Mr. Müllerson, Mr. Sadi and Mr. Wennergren; it met at the United Nations Office at Geneva from 14 to 18 October 1991 and elected Mr. Wennergren as its Chairman/Rapporteur. At the forty-fourth session, the working group was composed of Mr. Aguilar Urbina, Mr. Ando, Mr. Ndiaye and Mr. Wennergren; it met at United Nations Headquarters, New York, from 16 to 20 March 1992 and elected Mr. Aguilar Urbina as its Chairman/Rapporteur. At the forty-fifth session, the group was composed of Mr. Aguilar Urbina, Mr. Ando, Mr. Dimitrijevic and Mr. Pocar; it met at the United Nations Office at Geneva from 6 to 10 July 1992 and elected Mr. Dimitrijevic as its Chairman/Rapporteur.

F. Other matters

Forty-third session

11. The Committee was informed by the Under-Secretary-General for Human Rights of the report of the Secretary-General on the work of the Organization submitted to the General Assembly at its forty-sixth session 2/ and took note with appreciation of the reaffirmation by the Secretary-General of the vital role of human rights in international affairs. The Under-Secretary-General also briefed members on the work of the first session of the Preparatory Committee for the World Conference on Human Rights and noted that the Committee's preliminary comments and recommendations, adopted in July 1991, had been brought to the attention of the Preparatory Committee. Members were also briefed on the recent activities of the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Advisory Services of the Centre for Human Rights.

12. The Committee discussed in detail the possibility of modifying some of its procedures under article 40, paragraph 4, of the Covenant. Members of the Committee felt that observations or comments reflecting the views of the Committee as a whole at the end of the consideration of any State party report should be embodied in a written text, which would be dispatched to the State party concerned as soon as practicable. Three options were considered: to change the manner of drafting the Committee's annual report so that, instead of the paragraphs giving the conclusion of members of the Committee on a State party report, the views of the Committee itself should be presented; drafting a text setting out the Committee's conclusions, following its consideration of a report, for adoption at the subsequent session of the Committee; and preparing such a text for adoption at the same session of the Committee. The working group that was to meet prior to the forty-fourth session was requested to study the matter further.

13. The Committee also reviewed the methods of work generally with a view to making better use of its time during the dialogue with States parties. It was agreed that the number of chapters included in lists of issues for State party reports should be reduced and that the lists should be made more precise and concise.

14. The Committee, taking note of recent and current events affecting the situation of human rights in Yugoslavia, adopted a special decision (see para. 37 and annex VII).

Forty-fourth session

15. The Committee was informed by the representative of the Secretary-General that Mr. Antoine Blanca had been appointed to succeed Mr. Jan Martenson both as Director-General of the United Nations Office at Geneva and as Under-Secretary-General for Human Rights. Members were also informed of the solemn commemoration of the twenty-fifth anniversary of the Covenants held by the General Assembly on 16 December 1991 and noted with satisfaction the General Assembly's declaration concerning the great contributions to the protection of human rights that had flowed from the acceptance of the Covenants. They also took note with interest of the suggestion, made in the context of the Third Committee's discussions on the issue of emergency humanitarian interventions,

that representatives from human rights treaty bodies be sent on fact-finding missions to States parties whenever serious and urgent situations appeared to justify such actions.

16. Members were also informed of the actions taken at the forty-eighth session of the Commission on Human Rights and took note of the Commission's suggestion that priority should be given to the preparation of a general comment on article 18 of the Covenant.

17. The Committee expressed its great appreciation to Mr. Jan Martenson, former Under-Secretary-General for Human Rights, for his unfailing interest in the Committee's work and for the effective support and assistance he had provided to the Committee to help it to carry out its tasks.

18. The Committee also resumed its discussion on modifications to its methods of work under article 40, paragraph 4, of the Covenant and decided that comments of the Committee as a whole would be prepared as soon as the consideration of each State party report was completed. A rapporteur would be selected in each case to draft a text in consultation with the Chairman and Committee members for adoption by the Committee (see para. 45). The Committee also adopted its general comments on articles 7 and 10 of the Covenant (see para. 610 and annex VI).

19. The Committee, taking note of recent events in Peru, adopted a special decision (see para. 41 and annex VII).

Forty-fifth session

20. The Committee was informed by the Under-Secretary-General for Human Rights, who was addressing the Committee for the first time in that capacity, that the World Conference on Human Rights, to be convened pursuant to General Assembly resolution 45/155 of 18 December 1990, would take place in Vienna from 14 to 25 June 1993. Preparatory activities were under way and human rights treaty bodies were encouraged to formulate further comments and suggestions in that regard. The fourth meeting of persons chairing the human rights treaty bodies, which would meet at Geneva from 12 to 16 October 1992, would provide a further opportunity to the treaty bodies for coordination regarding the World Conference.

21. The Under-Secretary-General for Human Rights also informed the Committee of other significant developments of relevance to its work that had occurred since the Committee's forty-fourth session, notably the activities of the Committee against Torture and the preliminary work being undertaken by the Commission on Human Rights on an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He also referred to a number of recent human rights events carried out under the programme of advisory services and technical assistance in the field of human rights, including assistance in drafting States parties' reports under international human rights instruments. He also paid tribute to the valuable efforts of the Committee to encourage the protection of fundamental civil and political rights.

G. Staff resources

22. The greater complexity and more intensive pace of the Committee's operations, resulting from the increased number of States parties to the Covenant as well as from qualitative changes in the Committee's methods of work, have added significantly to the Secretariat's workload in providing substantive servicing to the Committee in relation to the monitoring of States' reports. The number of communications submitted to the Committee under the Optional Protocol has also grown markedly (see para. 615). Accordingly, the Committee requests the Secretary-General to take the necessary steps to ensure a substantial increase in the specialized staff assigned to service the Committee both in relation to the monitoring of States' reports and the Optional Protocol.

Forty-fifth session

H. Publicity for the work of the Committee

23. The Chairman, accompanied by members of the Bureau, held press briefings during each of the Committee's three sessions. The Committee noted with satisfaction the increased level of interest in its activities shown by the media and non-governmental organizations.

I. Yearbook (Official Records) of the Human Rights Committee

24. With regard to the *Yearbook* (Official Records) of the Human Rights Committee, the Committee noted that the Yearbook has been published up to 1984. The Committee was informed that the manuscript for the *Yearbook* for 1985-1986 had just been submitted for processing. The actual backlog in publication was thus eight years. It was the Committee's wish that work on the *Yearbook* be accelerated with a view to eliminating the existing backlog as soon as possible. The Committee expressed the hope that in the future the *Yearbook* would be published on a regular and timely basis.

J. Adoption of the report

25. At its 1174th to 1176th meetings, held on 30 and 31 July 1992, the Committee considered the draft of its sixteenth annual report, covering its activities at the forty-third, forty-fourth and forty-fifth sessions, held in 1991 and 1992. The report, as amended in the course of the discussion, was unanimously adopted by the Committee.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION AND BY THE COMMISSION ON HUMAN RIGHTS AT ITS FORTY-EIGHTH SESSION

26. At its 1140th meeting, held on 21 April 1992, the Committee considered the agenda item in the light of the relevant summary records of the Third Committee, General Assembly resolutions 46/81 of 16 December 1991, 46/111 and 46/113 of 17 December 1991, and Commission on Human Rights resolutions 1992/14 and 1992/15 of 21 February 1992.

27. In relation to the annual report of the Committee, submitted under article 45 of the Covenant, and the discussions held in the Third Committee at its 39th to 43rd meetings, from 12 to 18 November 1991, the Committee expressed full agreement that the question of discrimination against minorities was of particular importance. It was noted, in that regard, that preparatory work had already been initiated on a draft general comment relating to article 27 of the Covenant, which was the only binding provision on that matter currently in force. It was suggested that the work on that general comment should be accelerated.

28. Concerning the discussion in the General Assembly relating to the effective implementation of human rights instruments and the effective functioning of human rights treaty bodies, the Committee agreed that computer technology would help to improve the efficiency and effectiveness of the overall reporting procedures and reiterated the importance of coordination between the Human Rights Committee and the other treaty bodies. In that connection, at its 1148th meeting, held on 10 April 1992, individual members of the Committee were appointed to be responsible for liaison with the Subcommission on Prevention of Discrimination and Protection of Minorities, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination. The Committee also endorsed suggestions made in the Third Committee that the question of emergency humanitarian intervention should be examined more closely. In that regard, it endorsed the suggestion that representatives of human rights treaty bodies could offer their assistance to States parties whenever a serious situation appeared to justify such action.

29. The Committee discussed the relevant resolutions adopted by the Commission on Human Rights at its forty-eighth session and noted with appreciation the Commission's favourable comments on its work. The Committee expressed strong agreement, in particular, with the recommendation that countries having difficulties in introducing necessary changes in their legislation that would allow for ratification of international instruments on human rights should be encouraged to request appropriate support from the Centre for Human Rights under the advisory services and technical assistance programmes. The Committee also noted, with particular satisfaction, the Commission's renewed request to ensure that recent periodic reports of States parties to treaty-monitoring bodies and the summary records of Committee discussions pertaining to them were made available in the United Nations information centres in the countries submitting the reports.

III. REPORTS BY STATES PARTIES SUBMITTED UNDER ARTICLE 40 OF THE COVENANT

A. Submission of reports

30. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40, paragraph 1 (a), of the Covenant, the Human Rights Committee, at its second session, approved general guidelines regarding the form and contents of initial reports. 2/

31. Furthermore, in accordance with article 40, paragraph 1 (b), of the Covenant, the Committee at its thirteenth session adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. 3/ At the same session, the Committee adopted guidelines regarding the form and contents of periodic reports from States parties under article 40, paragraph 1 (b), of the Covenant. 4/ At its thirty-ninth session, the Committee adopted an amendment to its guidelines for the submission of initial and periodic reports relating to reporting by States parties on action taken in response to the issuance by the Committee of views under the Optional Protocol. 5/ At its forty-second session, the Committee revised its general guidelines for the submission of initial and periodic reports to take into account the consolidated guidelines for the initial part of the reports of States parties to be submitted under the various international human rights instruments, including the Covenant (HRI/CORE/1). 6/

32. At each of its sessions during the reporting period, the Committee was informed of and considered the status of the submission of reports (see annex IV).

33. The action taken, information received and relevant issues placed before the Committee during the reporting period (forty-third to forty-fifth sessions) are summarized in paragraphs 34 to 43 below.

Forty-third session

34. With regard to reports submitted since the forty-second session, the Committee was informed that the initial report of the Republic of Korea, the second periodic report of Afghanistan, the third periodic report of Hungary as well as information supplementary to the third periodic report of Poland had been received.

35. At the Committee's 1097th meeting, on 23 October 1991, representatives of Burundi submitted their country's initial report, which had been due in 1991. Although the Committee was unable, for technical reasons, to consider the report at that session, the representatives of Burundi were congratulated on their punctuality in submitting the initial report.

36. The Committee decided to send reminders to the Governments of Gabon,

Equatorial Guinea, Ireland and Somalia, whose initial reports were overdue. In addition, the Committee decided to send reminders to the Governments of the following States parties whose second periodic reports were overdue: Bolivia, Bulgaria, Cameroon, Central African Republic, Congo, Cyprus, the Democratic People's Republic of Korea, Egypt, El Salvador, Gabon, Gambia, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Kenya, Lebanon, Libyan Arab Jamahiriya, Mali, Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), Saint Vincent and the Grenadines, Suriname, Syrian Arab Republic, Togo, Viet Nam and Zambia; and to the Governments of the following States, whose third periodic reports were overdue: Barbados, Bulgaria, Costa Rica, Cyprus, Denmark, Dominican Republic, El Salvador, Gambia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Kenya, Lebanon, Libyan Arab Jamahiriya, Mali, Mauritius, Netherlands, New Zealand, Nicaragua, Norway, Portugal, Romania, Sri Lanka, Suriname, Syrian Arab Republic, Trinidad and Tobago and Zaire.

37. The Committee also noted that the third periodic report of Yugoslavia was due for submission to the Committee on 4 April 1988. Taking into consideration recent events in Yugoslavia affecting the situation of human rights under the Covenant, the Committee, acting under article 40, paragraph 1 (b), of the Covenant, decided to request the Government of Yugoslavia to submit its third periodic report as soon as possible and not later than 31 January 1992 for discussion by the Committee at its forty-fourth session (see annex VIII).

Forty-fourth session

38. The Committee was informed that the second periodic report of Venezuela and the third periodic reports of Japan, Norway and Yugoslavia had been received. The Committee was also informed that "core documents" prepared in accordance with the consolidated guidelines for the initial part of State party reports had been received from Belgium and Venezuela.

39. In view of the growing number of outstanding State party reports, the Committee agreed that members of the Bureau, as well as several members of the Committee, should meet in New York with the permanent representatives of all States parties whose initial or periodic reports had been overdue for two years or more. Accordingly, contacts were made with the permanent representatives of Bulgaria, Cyprus, the Democratic People's Republic of Korea, El Salvador, Gabon, the Gambia, Guyana, Iceland, the Islamic Republic of Iran, Jamaica, Lebanon, the Libyan Arab Jamahiriya, Mali, the Netherlands, New Zealand, Romania, Suriname and the Syrian Arab Republic. It was not possible to establish contact with the permanent representatives of the Central African Republic and Equatorial Guinea.

40. In addition, the Committee decided to send reminders to the Governments of Gabon, Equatorial Guinea, Ireland, Malta and Somalia, whose initial reports were overdue. Reminders were also sent to the Governments of the following States parties whose second periodic reports were overdue: Bolivia, Bulgaria, Cameroon, Central African Republic, Congo, Cyprus, the Democratic People's Republic of Korea, El Salvador, Gabon, Gambia, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Kenya, Lebanon, Libyan Arab Jamahiriya, Mali, Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), Saint Vincent and the Grenadines, San Marino,

Suriname, Syrian Arab Republic, Togo, Viet Nam and Zambia; and to the Governments of Australia, Barbados, Bulgaria, Costa Rica, Cyprus, Denmark, the Dominican Republic, El Salvador, France, the Gambia, Guyana, India, the Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Lebanon, the Libyan Arab Jamahiriya, Mali, Mauritius, the Netherlands, New Zealand, Nicaragua, Panama, Portugal, Romania, Rwanda, Sri Lanka, Suriname, the Syrian Arab Republic, Trinidad and Tobago and Zaire, whose third periodic reports were overdue.

41. The Committee initiated its consideration of the second periodic report of Peru at its 1133rd to 1136th meetings, held on 31 March and 1 April 1992. The Committee took note of the Peruvian delegation's request that the Government of Peru be permitted to answer in writing, within a period of three weeks, a number of questions raised by members of the Committee so that the consideration of the report could be concluded at the Committee's forty-fifth session. Taking into consideration recent events in Peru affecting the situation of human rights under the Covenant, the Committee, acting under article 40, paragraph 1 (b), of the Covenant, decided to request the Government of Peru to submit, together with the above-mentioned answers, a supplementary report relating to events occurring subsequent to the consideration of the report, in particular in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant, for discussion by the Committee during its forty-fifth session (see annex VII).

Forty-fifth session

42. The Committee was informed that the initial report of Ireland, the second periodic reports of Egypt and the Islamic Republic of Iran and the third periodic reports of the Dominican Republic, Jordan, Mexico and Romania had been received. Core documents had also been received from Ecuador, Hungary, Luxembourg, Mexico, Norway, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela.

43. At its 1167th meeting, held on 24 July 1992, the Committee took note with concern of the large number of States parties whose reports under article 40 of the Covenant were overdue, despite many appeals and reminders (see annex IV). Noting that that hampered its ability to monitor the implementation of the Covenant, the Committee requested the Secretary-General to bring the matter to the attention of the Twelfth Meeting of States parties, to be held at United Nations Headquarters, New York, on 10 September 1992, for appropriate action.

B. Consideration of reports

44. During its forty-third, forty-fourth and forty-fifth sessions, the Committee considered the initial reports of Algeria and the Republic of Korea; the second periodic reports of Austria, Belgium and Peru; and the third periodic reports of Belarus, Colombia, Ecuador, Mongolia, Poland and Yugoslavia. The Committee also completed consideration of the second periodic report of Morocco and of the third periodic report of Iraq, which had been initiated at the fortieth and forty-second sessions, respectively. At the request of the States parties concerned, the initial reports of Burundi and the Niger that had been scheduled for consideration at the Committee's forty-fourth and forty-fifth sessions, respectively, were postponed.

45. At its forty-third and forty-fourth sessions, the Committee reviewed its methods of work under article 40, paragraph 1, of the Covenant. At its 1123rd meeting, held on 24 March 1992, the Committee decided that comments would be adopted reflecting the views of the Committee as a whole at the end of the consideration of each State party report. That would be in addition to, and would not replace, comments made by members, at the end of the consideration of each State party report. A rapporteur would be selected in each case to draft a text, in consultation with the Chairman and other members, for adoption by the Committee. Such comments were to be embodied in a written text and dispatched to the State party concerned as soon as practicable before being publicized and included in the annual report of the Committee. They were to provide a general evaluation of the State party report and of the dialogue with the delegation and to underline positive developments that had been noted during the period under review, factors and difficulties affecting the implementation of the Covenant, as well as specific issues of concern regarding the application of the provisions of the Covenant. Comments were also to include suggestions and recommendations formulated by the Committee to the attention of the State party concerned.

46. The status of reports considered during the period under review and of reports still pending consideration is indicated in annex V to the present report.

Summaries of the consideration by the Committee of States parties' reports

47. The following sections relating to States parties' reports are arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of reports at its forty-third, forty-fourth and forty-fifth sessions. These sections are summaries, based on the summary records of the meetings at which the reports were considered by the Committee. Fuller information is contained in the reports and additional information submitted by the States parties concerned 7/ and in the summary records referred to. The comments of the Committee on States parties' reports formulated in accordance with the new method of work initiated at the forty-fourth session appear at the end of each summary.

MOROCCO (continued)

48. The Committee began its consideration of the second periodic report of Morocco (CCPR/C/42/Add.10) at its 1032nd to 1035th meetings, on 7 and 8 November 1990, during its fortieth session (see CCPR/C/SR.1032-1035) and continued it at its 1094th to 1096th meetings, held on 22 and 23 October 1991 (see CCPR/C/SR.1032-1035). The discussion of the report at the Committee's fortieth session is reflected in the Committee's previous annual report. 8/ The present document reflects the discussion that took place at the forty-third session. (For the composition of the delegation, see annex VIII.)

49. The representative of the State party drew attention to a number of developments that had occurred since the consideration of the report at the fortieth session of the Committee, noting in particular that a bill had been adopted for the establishment of administrative tribunals in the various regions of the Kingdom on 12 July 1991. In accordance with the suggestions

and recommendations of the Advisory Council on Human Rights, a bill had also been adopted to amend the Code of Penal Procedure, reducing the length of police custody and pretrial detention. Other recommendations of the Council were expected to lead to improved monitoring of pretrial detention, an increase in judicial police staff, improved living conditions in detention centres, priority handling of cases of pretrial detention, observance of time-limits for the handling of cases submitted to the Special Court of Justice, and post-mortem examinations in cases of death in custody. The representative also mentioned that the teaching of humanitarian law and human rights had been extended to military and police academies as well as to the National Institute for Judicial Studies and that during 1991 a number of prisoners had been released.

Liberty and security of the person

50. Members of the Committee wished to know what remedies were available to persons or their relatives who believed that they had been detained wrongly, and whether those remedies were effective; how quickly after arrest a person's family was informed; what was the maximum legal period of detention without trial, and whether there was any provision for a regular review by a court of such detention; and whether the examination of the draft reform of the Moroccan Criminal Code, mentioned in paragraph 53 of the report, had been completed and, if so, with what results.

51. In addition, members of the Committee wished to know whether the Oufkir family was still being detained and, if so, what legal conditions governed their detention; whether there were currently or had been in the recent past secret detention centres; whether there were currently any political detainees and, if so, how many; what conditions prevailed in places of detention, particularly Tazmamart prison, and whether any prisoners had been released from that prison; what had happened to the 61 military officers sentenced on 29 March 1972 in the Skirat trial and on 7 November 1972 in the Kenitra trial; how an abuse of authority was differentiated from a mere error in proceedings; whether extensions of the length of detention were monitored; and what percentage of persons arrested were being subjected to extended detention, where such persons were being held, and why they had not been released.

52. Members also wished to know whether the new bill limiting the duration of pretrial detention had come into effect and, if not, what was the reason for the delay; what provisions were contained in that bill with respect to time-limits on detention, preventive detention, access to lawyers and the question of the acceptance of police statements as evidence; how preventive detention was defined and what were the applicable procedures; whether proceedings had been instituted against the police in cases of arbitrary detention and, if so, what disciplinary measures had been applied; whether there was any procedure, similar to habeas corpus or *amparo*, which would permit a detainee to test the legality of his detention, particularly in the case of prolonged imprisonment; whether the practice of linking the duration of remand in custody to the penalty for the relevant offence was compatible with the principle of the presumption of innocence; whether persons could be imprisoned for failure to pay a debt; whether the reported practice of detaining innocent relatives of persons suspected of crimes was still being resorted to; and whether political prisoners of Western Saharan origin had disappeared or died in custody and, if so, whether any such cases had been investigated.

53. In his reply, the representative stated that detentions without trial were strictly regulated by the Code of Criminal Procedure and other pretrial rules. In cases of detention following a sentence or judicial decision subsequently found to have been erroneous, compensation was normally granted. Action for compensation could only be taken under article 70 of the Code of Obligations and Contracts. A remedy was available against any official who had committed an act of deliberate abuse. Under Act No. 6790, which was in the process of promulgation, the judicial police had to inform the family of an arrest without delay and to submit a daily list of persons in custody to the public prosecutor's office or to the Court of Appeal. In all cases, the attorney of the court of first instance and the judicial authorities responsible for monitoring custody had to inform the family if the judicial police had not done so. Any extension of a period of custody had to be requested in due form from a prosecutor's office and carried out by order of an examining magistrate; that order was open to appeal. The defence lawyer had the right to attend the interrogation before the prosecutor and the accused person had the right to request a medical examination.

54. Replying to further questions, the representative stated that Mrs. Oufkir and her children had been freed and that no administrative measures had been taken to restrict her freedom of movement. The question of the army officers in detention was in the process of settlement. The distinction between abuse and error rested on the question of intent. The Moroccan Criminal Code, the Code of Criminal Procedure and the Code of Obligations and Contracts contained provisions relative to compensation and redress.

55. The duration of police custody was in principle 24 hours, extendable to a maximum of 48 hours. In cases involving the security of the State the police might hold a person in custody for 96 hours; that period was extendable only a single time. The period of remand in custody was two months, which could be extended five times to an overall maximum detention in custody of one year. Law No. 6790 provided that in the case of minor offences police statements would be conclusive, but that in the case of criminal offences police statements would form only part of the body of evidence in court proceedings. No secret detention centres existed under the jurisdiction of the Ministry of Justice: Derb Moulay Cherif was a police station in Casablanca and the Villa Mokris was currently the headquarters of the Moroccan Red Crescent in Rabat. Morocco did not recognize political offences; when criminal offences were committed, whether or not they were politically motivated, their perpetrators were charged under the ordinary law. Imprisonment for debt could occur only after a series of other measures had been taken, such as a seizure of assets in the case of debt to the State. The principle of the presumption of innocence was fully respected in Morocco.

56. Morocco followed the European procedures relating to the availability of remedies and also provided various guarantees which did not exist in the penal procedures of a number of other States. The authorities had been informed of a number of requests for files on persons from Western Sahara who had disappeared and were examining all those cases with the greatest care. A number of disappearances dated back to a period when Morocco did not administer Western Sahara. There were also problems with regard to identification, names and spelling, since the nomadic people in question were often only identified by tribe.

Right to a fair trial

57. With regard to that issue, members of the Committee asked what was the relationship among chapters VI, VII and X of the Constitution and how the independence and impartiality of the judiciary were being ensured; what were the qualifications of judges; and what were the procedures for appointing and removing members of the judiciary. They also wished to receive information concerning the organization and functioning of the Moroccan bar; the availability of legal assistance to criminal defendants; and, with reference to paragraph 64 of the report, on the dispositions relating to "rules of civil law deriving from different religious faiths" contained in dahir No. 1-58-250 of 6 September 1958.

58. In addition, members of the Committee wished to know whether the independence of the judiciary was effectively guaranteed despite the fact that the King, who also held executive and legislative power, presided over the Higher Council for the Magistrature; whether magistrates had been removed or prosecuted for serious infractions; whether the consideration of police reports as accurate unless disproved was in conformity with article 14 of the Covenant; what remedies were available to contest their accuracy; why articles 76 to 81 of the Constitution did not provide guarantees of a regular nature; and what cases were dealt with by the military courts and, specifically, whether military courts or special courts dealt with persons accused of having endangered public order. Members of the Committee also asked what guarantees existed for the defence of the individual in "collective" trials; what the practice was with regard to the preparation of a defence and the availability of legal assistance; what procedures were being used to establish that confessions had not been obtained through the use of force or threats; to what extent the presumption of innocence was applied in court proceedings; whether the handing down of different penalties for comparable offences was a matter of policy and whether a higher organ was in a position to influence decisions by courts with regard to the length of imprisonment; and what was meant by "morality" as a reason for holding court sessions in camera.

59. In reply, the representative stated that chapter VI of the Constitution established the democratic principle of the separation of the judicial, legislative and executive power, the judicial power being an independent and impartial power. Chapter X of the Constitution instituted a constitutional chamber within the Supreme Court responsible for ruling upon any disagreement between the Parliament and the Government concerning the juridical or statutory nature of legal norms. Chapter VII provided for the institution of a High Court with special penal jurisdiction over members of the Government who committed offences in the exercise of their duties. All guarantees for a fair trial had been provided for in the procedures before that special court.

60. Turning to the question of the independence of the judiciary, the representative explained that the judiciary was organized in a single body including both judges and prosecutors. Magistrates were nominated at the recommendation of the Higher Council for the Magistrature from among candidates who had followed a course at the National Institute for Legal Studies and a subsequent internship of 15 months at courts of first and second instance. Since the reform of the administrative tribunals there were two main courses at that Institute, one judicial and the other administrative. Decisions to dismiss magistrates were taken upon the recommendation of the

Higher Council for the Magistrature, which was an independent organ composed of the Minister of Justice, the First President of the Supreme Court, the Attorney-General, the President of the first chamber of the Supreme Court and four representatives elected from among the magistrates. The Council was presided over by His Majesty the King in person. Attempts to undermine the independence of the judiciary were subject to legal sanctions.

61. Lawyers performed their functions within the framework of bar associations that were linked to courts of first instance and which possessed legal personality. Disciplinary measures were taken by a disciplinary council. Conditions of access to the profession of lawyer included a law degree from a Moroccan or recognized foreign law faculty. Candidates were required to undergo a three-year period of training followed by a professional examination. A system of judicial assistance was provided to persons without means. Current legislation provided that all persons arrested and detained on Moroccan soil had the right to be assisted by a lawyer of their choice or by a lawyer appointed by the court. No distinction was made before the law in respect of religion except with regard to matters of personal status and succession. The application of the principle of the presumption of innocence was guaranteed by article 10 of the Constitution, which provided that no one could be arrested, detained or punished except as provided by law.

62. Responding to other questions, the representative confirmed that, in conformity with provisions of the Code of Penal Procedure, police reports were considered to reflect the truth unless proven otherwise. Morocco had chosen the inquisitorial procedure, meaning that the burden of proof rested with the accused. The military courts were special courts that dealt with matters involving State security or possession of weapons and applied provisions of the Penal Code and the Code of Penal Procedure in common law. The King normally presided over the Higher Council for the Magistrature only during its opening sessions. The Minister of Justice, Vice-Chairman of the Council, did not intervene in decisions with regard to promotion or disciplinary measures. Confessions alone were not sufficient as evidence but needed to be supported by other evidence. Courts met in closed session when public order was endangered or in connection with morality, such as in cases involving children or the intimacy of the family.

Freedom of movement and expulsion of aliens

63. Concerning that issue, members of the Committee wished to know what the procedures leading to expulsion were and whether an appeal against an expulsion order would have suspensive effect; what the reasons were for which a person could be expelled and whether they included political opinion; whether expulsion decisions taken by the General Directorate for National Security were final; what possibilities of appeal existed against decisions taken by tribunals; what procedures had been applied in expelling Abraham Serfati on 13 September 1991; what were the reasons for the expulsion of several hundred persons from their residence by the local authorities of Casablanca; what rules and procedures applied for obtaining a passport; what was the justification for applying strict controls on foreigners, especially Spanish-speaking aliens in Western Sahara; and whether the Oufkir family had obtained passports.

64. In reply, the representative stated that aliens who had entered Moroccan

territory illegally or had contravened the law or had exercised a profession in a region other than the one in which they were authorized to do so were sent back by order of the local authorities. Expulsion orders could be appealed and, if rejected, a further appeal could be made to the administrative chamber of the Supreme Court, but this would not have suspensive effect. The legal basis for the expulsion of Mr. Serfati had been an order by the Minister of the Interior. Since it was not established that Mr. Serfati was of Moroccan nationality, his case had been dealt with on the basis of rules and regulations pertaining to aliens. Obtaining a passport was possible for all Moroccan citizens; a number of measures had been taken in April 1991 with a view to accelerating the procedure. Restrictions on the issuance of passports applied only to cases where national security or morality were involved, and the members of the Oufkir family could obtain passports, like all Moroccan nationals. There were no restrictions on freedom of movement in the southern provinces of Morocco. The measure of banishment did not exist.

Freedom of religion and expression

65. With reference to that issue, members of the Committee asked to be provided with information concerning registration or other procedures relating to the recognition of religions or religious sects by the authorities and about any difficulties that had been encountered in that regard. They also wished to know whether there were any mechanisms for censorship of the press or the media; what conditions had to be fulfilled before foreign newspapers or periodicals could obtain a permit; what the position was in respect of the Baha'i faith; what were the revealed religions, according to Moroccan law; what rules applied to marriages between members of different religious groups; whether the privileges extended to members of the press influenced their independence; and what sort of publications were subject to penal sanctions or some form of censorship.

66. In reply, the representative stated that Islam was the religion of the State, which guaranteed to all the free exercise of religion without permitting, however, any attempt to shake the convictions of a Muslim. Religious denominations were not allowed to register and were covered by the relevant provisions of the dahir of 15 November 1985 on the freedom of association. Liberty of expression was enshrined in article 9 of the Constitution and regulated by the Press Code of 1958, which contained administrative measures applicable to the publication of newspapers and periodicals, including the requirement of the deposit of copies of newspapers or other publications with the judicial authorities and the Ministry of Information. Periodicals or other documents could be published without being subjected to censorship. The foreign press was covered by a decree which provided that the publishers had to present a written request containing general information about the envisaged publication to the authorities.

67. Concerning the questions regarding the Baha'i faith, the representative explained that according to Islam only Christianity and Judaism were revealed religions. Persons belonging to the latter two faiths could exercise their religion freely and publicly. The Baha'i faith did not qualify as such and was considered as a heretical sect of colonial origin. Accordingly, its services could only be held in private. Article 221 of the Penal Code strictly prohibited all acts of proselytism. Publications were prosecuted

only in cases of defamation of individuals, or defamation or insult of courts, tribunals and government officials. The national press enjoyed complete autonomy and there was no legal or de facto censorship. With regard to marriages of persons belonging to different religions, the representative explained that there were no obstacles to a marriage between a Moroccan Muslim male and a foreign Christian or Jewish female. A Christian or Jewish man who intended to marry a Moroccan Muslim woman had to convert to Islam first.

Freedom of assembly and association

68. With regard to that issue, members of the Committee wished to know what the criteria and procedures were for the registration of associations and what the status and role of trade unions were in Moroccan economic, social and political life.

69. In reply, the representative stated that article 9 of the Constitution guaranteed to all citizens freedom of association and the freedom to join any political organization or labour union. Several unions existed and played an important role in the defence of the interests of their members, participating actively in decision-making at the national and local levels. Associations could be freely established on condition of the deposit with the public prosecutor's office and the local authorities of a declaration stating the name and purposes of the association as well as other information concerning the civil status of the founding members. The *dahir* of 1958 provided that associations were null if based on illegal goals, were in contravention of the law or morality, or threatened the territorial integrity or the monarchic form of the State.

Protection of the family and children

70. With regard to that issue, members of the Committee wished to receive a description of the relevant provisions of the Code of Personal Status and Succession and information as to their compatibility with article 23, paragraph 4, of the Covenant; information on the law and practice regarding the employment of minors; information on the role of the *wali*, or legal guardian, in the case of marriage before the age of legal majority; and on the possibilities of recourse to a court in the event the *wali* refused to give his consent.

71. In reply, the representative stated that under article 3 of the Moroccan Nationality Code, there were three sets of rules governing, respectively, the personal status of Moroccan Muslims, Moroccan Jews and non-Muslim and non-Jewish Moroccans. The Code of Personal Status and Succession was applicable in Morocco only to Muslims, non-Muslims being subject to their own laws. Children under the age of 12 were not permitted to work and juveniles under the ages of 18 were prohibited from working in certain trades on grounds of health and security. The work of minors in mines was prohibited. The *wali* was a male member of the family of a woman under the age of legal consent who was to be married.

Right to participate in the conduct of public affairs

72. With reference to that issue, members of the Committee asked how equitable access of women and of religious minorities to public office was

ensured; what the percentage of women was in elected office and in public employment; and under what circumstances citizens could lose their civil and political rights.

73. In reply, the representative said that equal access of women and members of religious minorities to public office was guaranteed by the Constitution. Normally, recruitment to public service was by competitive examination in which the principle of the equality of the sexes was observed. Women were permitted to join the armed forces but had to perform civilian tasks. Fourteen per cent of those elected in the communal elections of 1983 were women, but no woman had been elected in the legislative elections of 1984 since traditional attitudes did not yet favour the election of women to such an office. The deprivation of civil and political rights was a legal penalty lasting 2 to 10 years and was intended to prevent persons unworthy of public confidence from being employed in the public service or in education and from exercising activities of trust or from representing the people in parliament.

Rights of persons belonging to minorities

74. Concerning that issue, members of the Committee asked whether there were any ethnic, religious or linguistic minorities in Morocco, and if so, how the enjoyment of their rights under the Covenant was ensured; what minorities other than religious minorities existed; what facilities such minorities enjoyed with regard to the use of their own language and access by their children to schools where instruction was given in that language; and what rights the Berber people enjoyed with regard to protection of their language.

75. In reply, the representative stated that there were no problems in Moroccco regarding ethnic, religious and linguistic minorities. The Jewish community was not considered a minority since it lived in symbiosis with the rest of Moroccan society. The Berbers were completely integrated with the rest of the population. Foreigners living in Morocco were free to open schools if they so wished.

Concluding observations by individual members

76. Members of the Committee expressed their appreciation for the willingness of the delegation of the State party to engage in a dialogue with the Committee and noted that a number of positive developments had occurred. Among those were the release of a number of political prisoners, improvement of the human rights situation of the Oufkir family, the adoption of the new bill on preventive detention, decentralization of the administrative tribunals, the liberal attitude towards the Jewish community and the improvement of the position of women in Moroccan society.

77. However, members of the Committee expressed their continuing concern with regard to arbitrary arrests, disappearances, conditions of imprisonment, the existence of unacknowledged prisons, the sometimes excessive length of detention, problems relating to the independence of the judiciary and to the application of certain aspects of article 14 of the Covenant, notably the preparation of a defence and the burden of proof, the suppression of political and cultural activities in universities and other restrictions in the field of freedom of expression, such as not allowing criticism of Moroccan institutions or the monarchy, treatment of the Western Saharans and the difficult position

of the Baha'i community and the restrictions on freedom of religion in general. It was hoped that the dialogue with the Committee would provide useful information for the Moroccan Government and would encourage further improvements in the protection of human rights.

78. The representative of the reporting State expressed his appreciation to Committee members for the keen interest they had shown in the consideration of the report. Due note had been taken of the Committee's comments, which would be conveyed to the Moroccan authorities.

79. In concluding the consideration of the second periodic report of Morocco, the Chairman thanked the delegation for its cooperation. He emphasized the importance of constant review of domestic legislation and practice in accordance with the provisions of the Covenant and stated that the dialogue with the Committee should be used for that purpose.

AUSTRIA

80. The Committee considered the second periodic report of Austria (CCPR/C/51/Add.2) at its 1098th, 1099th and 1100th meetings, held on 24 and 25 October 1991 (CCPR/C/SR.1098, SR.1099 and SR.1100). (For the composition of the delegation, see annex VIII.)

81. The report was introduced by the representative of the State party, who drew members' attention, in particular, to the fact that the Second Optional Protocol aiming at the abolition of the death penalty was currently before the Austrian Parliament, with ratification expected in early 1992.

Constitutional and legal framework within which the Covenant is implemented

82. With reference to that issue, members asked what measures Austria had taken to give effect to the rights recognized in the Covenant and whether there were any difficulties in that regard. Members also inquired about the remedies available to individuals whose rights under the Covenant had been violated. Concerning the promotion of human rights, they wished to know, in particular, whether a commission, ombudsman or similar institution would be established, as well as about measures taken to increase public awareness of the Covenant and the Optional Protocol.

83. Members were concerned about the status of the Covenant, given that Austria had incorporated into its domestic law the European Convention on Human Rights, but not the Covenant. They wondered whether those parts of the Covenant that were not reflected in the European Convention, if not the Covenant in its entirety, could be incorporated into Austria's domestic law. In addition, members wished to know whether there was any governmental machinery for monitoring legislation to ensure its compatibility with Austria's international obligations under the Covenant; how complaints would be handled in the light of the provisions of the Optional Protocol; and whether there was any legal procedure under which the provisions of the Covenant could be abrogated. Members were also concerned about the reservations to the Covenant and the Optional Protocol entered by Austria and wondered whether the withdrawal of some of them was being considered.

84. In his reply, the representative of the State party said that the Covenant, though not an integral part of the domestic law, was recognized as an instrument prescribing obligations under international public law. Fundamental human rights in Austria had been guaranteed since the enactment of the Basic Law in 1867 and the ratification of the European Convention on Human Rights, which in 1964 was made part of domestic constitutional law. Notwithstanding the fact that neither a judge nor an administrative authority was required to apply the provisions of the Covenant directly, there were no difficulties in giving effect to the rights recognized in it. Since the Covenant was an international obligation for Austria any abrogation would be a violation of international law. Nevertheless, under the existing constitutional framework it would not be possible to consider its partial incorporation into domestic law.

85. Regarding the question of remedies, the representative explained that remedies could be sought from a hierarchy of courts and that appeals could be lodged at one or more levels. Compensation of victims was also available at various levels of the administration. After the exhaustion of all levels of appeal in the administrative branch the appeal could be further carried to the Constitutional Court should the administrative decision be alleged to have violated human rights. The Constitutional Court could repeal the offending provision or rescind the administrative decision against which the appeal was lodged.

86. The Government had no intention to set up a commission on human rights or a special agency to promote human rights. However, the Office of the Ombudsman had been in existence since 1976 and all government institutions were ready to provide information on human rights upon request. While the public was less aware of the Covenant than of the European Convention on Human Rights, it was generally aware of its provisions and of those of the Optional Protocol. The Austrian Government believed that the provisions of the Basic Law and of the European Convention on Human Rights, as amended by subsequent protocols, would ensure compliance with the provisions of the Covenant. Furthermore, the text of every statute or decree was scrutinized in the light of the fundamental rights and freedoms provided for in the Covenant, the European Convention and domestic law. To ensure that any person whose rights or freedoms were violated would have effective remedies, Austria was prepared to change its domestic legislation to provide for new remedies or to allow the use of existing remedies, if regarded by the Human Rights Committee as suitable, in the same manner as it had done in respect of the decisions of the European Court on earlier occasions.

87. The problems that had led Austria to make a number of reservations at the time of ratification of the Covenant were largely attributable to differences relating to existing practice in Austria and to the provisions of the European Convention and its interpretation. However, it would always be possible to consider whether or not any of those reservations should be withdrawn.

Non-discrimination and equality of the sexes

88. In connection with that issue, members wished to know how the Austrian Constitution guaranteed the rights provided for in article 2, paragraph 1, of the Covenant; whether women received equal pay and what measures had been taken to promote women's participation in the various sectors of society; what

was the proportion between the sexes in educational institutions; how the special Federal Constitutional Act against racial discrimination had been applied in practice; how the rights of aliens were restricted as compared with those of citizens; whether all types of discrimination identified in the Covenant were prohibited; whether the Constitution still excluded members of the ruling and former ruling families from being elected as President; and why articles 26 and 27 of the Covenant could not be brought into direct application in Austria whereas the International Convention on the Elimination of All Forms of Racial Discrimination had been made operational in Austria by means of a Constitutional Act.

89. In his reply, the representative said that discrimination was prohibited by the Constitution. Since virtually all the rights contained in the Covenant were also embodied in the European Convention, which had become a part of constitutional law, Austrian law necessarily contained provisions similar to those of the Covenant. However, owing to historical reasons, article 7 of the Constitution (which referred to the rights of citizens only) was not identical to article 2 of the Covenant (which referred to the rights of all individuals). On the question of the treatment of the former imperial family, the representative said he would convey the views of the members of the Committee to the Austrian Government.

90. On the treatment of aliens and citizens generally, the representative stressed that the principle of equality applied to all aliens in Austria under the terms of the Constitutional Acts in relation to the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention, although some differences in respect of employment in certain professions, such as the civil service for which only citizens were eligible, were allowed for. No information was available concerning the application of the special constitutional law prohibiting racial discrimination as no court had ever had to deal with a complaint thereunder.

91. The figures for 1988-1989 showed that about 50 per cent of children attending day-care centres and primary and secondary schools were female, and that one third of all university students were female. A report on the measures taken to promote the participation of women in the life of the country would be brought to the attention of the Committee as soon as it was completed. On the issue of equal pay, the representative acknowledged that such equality had not been guaranteed in Austria. The Government had therefore established an Equal Pay Committee and it was expected that matters would improve slowly.

State of emergency

92. Concerning that issue, members wished to know, in the absence of any constitutional provision regarding the suspension of fundamental rights, how an emergency situation would be dealt with.

93. In his response, the representative said Austria had no specific legislation relating to emergency situations. The Constitution authorized the Federal Government to issue decrees which had the force of parliamentary legislation, but that power had never been used.

Right to life

94. With regard to that issue, members noted that Austria was considering ratification of the Second Optional Protocol aiming at the abolition of capital punishment. They also wished to know what rules and regulations governed the use of firearms by the police and security forces; whether the idea of homicide at the request of the victim included euthanasia practised by a doctor; whether suicide had been decriminalized; when it was planned to legalize abortions; and whether any steps had been taken to provide the population with a healthy environment by curbing pollution and by adopting measures against acquired immune deficiency syndrome (AIDS), cancer or tobacco-related diseases.

95. In his reply, the representative said that the use of firearms by the police and security forces was restricted by a 1969 law which provided that they could only be used when necessary to subdue an aggressive person after a warning had been issued and other means had failed. "Active" euthanasia was regarded as illegal and contrary to medical ethics. Attempted suicide had ceased to be an offence, but helping a person to commit suicide was still punishable. Termination of pregnancy during the first three months was not punishable by law. The Code of Criminal Procedure had been amended in 1987 with a view to imposing greater penalties for pollution-related offences, but discussion of that sensitive issue was still continuing. A system under which cases of AIDS were registered had been introduced and the principle of anonymity was strictly respected. Homosexual prostitution had also been decriminalized to enable the application of preventive measures and to fight AIDS more effectively. It was also planned to provide drug addicts with substitute products.

Liberty and security of the person and treatment of prisoners and other detainees

96. With reference to that issue, members of the Committee wished to know whether there had been any allegations of violations of obligations under article 7 of the Covenant and whether statistics regarding ill-treatment of detainees were available. Noting that torture had been practised in Austria, members requested information on the measures that had been taken to prevent ill-treatment, on the competent investigative authorities and complaints procedures, and concerning the main problems faced by the prison commissions and how such problems had been addressed. It was also asked how Austrian law complied with articles 7 and 9, paragraph 3, of the Covenant; whether guidelines had been issued to the security forces; and what was the average length of pretrial detention. Members also inquired about the principles of the Austrian law of evidence, in particular whether confessions obtained through ill-treatment were admissible in evidence.

97. In addition, members wished to know whether there was any procedure providing for the review of compulsory confinement decisions; whether the European Committee for the Prevention of Torture had detected any cases of violations of the provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; how soon after arrest a detainee was allowed to contact counsel; what were the powers and performance of prison commissions; and which authority was responsible for the systematic monitoring of the treatment of persons held in psychiatric

institutions and reformatories for juvenile delinquents. Members also questioned the basis for the reservation entered by the Austrian Government with respect to article 10 of the Covenant and wondered if it could be withdrawn.

98. Replying to the questions raised by members, the representative confirmed that there had been allegations of violations of obligations under article 7 of the Covenant. In 1989 a decree was issued, ordering that justifiable allegations should be the subject not only of a police inquiry, but also of a thorough investigation by an independent examining magistrate. While it was too early to provide statistics on the results of the inquiries (a decree stating that statistics should be kept of allegations of ill-treatment during detention was issued in May 1991), the representative referred to a report published by Amnesty International in 1990 in which 14 individual cases had been mentioned. Even before the publication of that report, a decree containing strict orders concerning the rights of detainees to communicate with counsel and the possibility of warning third parties of the arrest had been given. Furthermore, a pamphlet on the rights of detained minors had also been published. The prison commissions were independent bodies responsible for monitoring prison conditions and recommending ways of improvement. As a result of their work, some proposals had been made with a view to improving prison conditions and promoting training programmes for inmates.

99. Regarding pretrial detention, the representative noted that a person remanded in custody after arrest would have to be brought before a magistrate within 48 hours and to be questioned by a magistrate within the following 24 hours, which could be extended up to 72 hours. Any doubt about the lawfulness of the arrest or detention in the view of the magistrate would result in the release of the detainee, although such a decision could be appealed against. According to the figures available for 1988, the average length of pretrial detention was 76 days.

100. On the issue of admissibility of evidence obtained through ill-treatment, the representative explained that the Austrian Parliament's declaration, made when the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified, had in effect prohibited the use of statements obtained by torture. The Austrian Government was aware that the Code of Criminal Procedure would have to be amended in the light of article 15 of the European Convention on Human Rights so as to provide explicitly for the prohibition of the use as evidence of confessions obtained through ill-treatment. In the view of the Austrian authorities, article 15 of the European Convention was even more restrictive than article 7 of the Covenant.

101. In response to queries about confinement in psychiatric institutions, the representative said that compulsory confinement had dropped by two thirds over the previous 15 years and that a new law and new procedures had been in effect since 1 January 1991. Under that law, any person confined compulsorily in a psychiatric institution had to be brought before the competent civil court within two days and questioned by the magistrate within the following four days. Any restriction of freedom of movement and communication would have to be based on a judicial decision, which had to be given within 8 days, and against which an appeal could be lodged within 14 days.

102. Referring to the reservation entered in respect of article 10 of the Covenant, the representative explained that one of the reasons was that the Government had not regarded the provisions in the Covenant with respect to juvenile prisoners as adequate or in conformity with its own practice. Although Austria recognized the principle of separating young untried prisoners from adults, the strict application of that principle could have meant that a young person of 18 could not share a cell with somebody of 19, which had been the new age of criminal responsibility since 1988. Furthermore, in recent years there were barely more than 2 or 3 young prisoners in each penitentiary establishment and the total number of juvenile delinquents serving prison sentences had never exceeded 50.

103. In response to members' queries as to whether the maximum period of pretrial detention could be reduced from five days to three days, the representative said that the Government intended to amend the Code of Criminal Procedure in order to reduce the maximum from five to four days, thus bringing the practice into line with the decisions of the European Court of Human Rights. There were no special provisions relating to terrorism and, fortunately, there had thus far been no terrorist act committed by an Austrian. The installation of recording devices to monitor the questioning of detainees was not yet a current practice in the European democracies. However, under a planned reform of the Code of Criminal Procedure it was envisaged that a detained person would have the right to request a trustworthy third party, such as a lawyer, to be present during the questioning. Moreover, the Government had recently taken action on training police officers in human rights matters.

Right to a fair trial

104. In connection with that issue, members wished to know what criteria were followed in selecting members of a jury; what was the average length of criminal cases; whether there had been any application for payment of compensation in accordance with the Criminal Compensation Act; and whether the reservation entered under article 14 of the Covenant would be withdrawn.

105. Replying to the questions raised by members, the representative said that since 1 January 1991 members of a jury and assessors had been chosen in a random manner. The average length of criminal cases was rather shorter than in other countries, especially since the introduction of a monitoring system in 1990. The question of payment of compensation arose in the event of unlawful detention, pretrial detention and subsequent failure to bring charges, and in the case of an acquittal at the end of a second trial of a person who had been sentenced and imprisoned. Statistics for the previous 8 years showed that there were on average from 5 to 24 cases of compensation per year, most of which came under the pretrial detention category. Two thirds of the cases were found justifiable, with the victims receiving compensation.

106. As for the question concerning Austria's reservations in connection with article 14, paragraph 5, of the Covenant, the representative explained that since criminal proceedings in Austria were invariably of a two-tiered character, the Austrian authorities were not certain that the imposition of a more severe sentence by a court of second instance, which would not be subject to appeal, would be consistent with the provision in question. Thus, the reservations were entered by way of precaution. With regard to

article 14, paragraph 7, the representative explained that only in exceptional cases, where new evidence was to be submitted, would a trial be reopened following a final judgement. The Government could envisage withdrawing Austria's reservations if the Committee or any other United Nations body could provide the necessary assurances that Austrian practice was not inconsistent with the Covenant.

Freedom of movement and expulsion of aliens

107. With regard to that issue, members of the Committee wished to receive further information concerning the relevant judicial or administrative procedures for appeal against a prohibition order and asked whether such an appeal had suspensive effect. In addition, members wished to know whether there were, in law or in practice, any restrictions on the right of a citizen to establish his residence and domicile anywhere in Austria; what Austria's policy was on immigration and the granting of asylum; how many people had applied for refugee status or temporary status in Austria after fleeing Yugoslavia; and what policy was envisaged in the latter regard in the future.

108. In reply, the representative said the substance of article 13 of the Covenant had been incorporated into the Seventh Protocol to the European Convention and consequently into Austria's Constitution. However, the Protocol differed from the Covenant on the issue of whether an appeal against expulsion order had suspensive effect. Whilst the Protocol acknowledged in principle that there should be suspensive effect in cases of expulsion, some exceptions were regarded as necessary in cases involving public order and for reasons of national security. In those exceptional cases an alien might be expelled before he could exercise his right to submit reasons against the expulsion, to have his case reviewed and to be represented.

109. Regarding the freedom of movement, the representative confirmed that Austrian nationals could move freely within the country. On the question of asylum, Austria's policy was to grant asylum to political refugees under all circumstances. For other refugees, the Government was trying to work out an adequate policy. At present, if a refugee had passed through a country where his security was guaranteed, he would be repatriated to that country. Only a few requests for refugee status had been made by Slovenians and Croatians and they had been granted.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

110. In connection with those issues, members wished to be informed of the modalities applicable to conscientious objectors and the duration of the alternative service required of them; how Jehovah's Witnesses, who objected to any kind of alternative service, were dealt with; which practices were not considered as being consistent with public order or public morals; how the right to seek information, envisaged in article 19, paragraph 2, of the Covenant, was guaranteed; whether the application of article 111 of the Criminal Code had given rise to any difficulties with regard to the implementation of article 19 of the Covenant; and what limits were imposed by Austrian law on the right to seek and impart information.

111. Noting that there were no private television or radio stations in Austria, members also wished to know whether those forms of mass media were completely monopolized by the State. Members also asked what policy guidelines were followed to ensure objective reporting by the press and what the criteria and selection mechanism were with respect to the granting of subsidies to the press. In addition, they requested clarification of the legal basis, interpretation and application of article 188 of the Criminal Code, which provided for penalties in cases where a belief, custom or institution was ridiculed or discredited, and asked which person was duly authorized by law, pursuant to article 14 of the Basic Law, to compel another person to take part in religious activities.

112. In his reply, the representative explained that under a new proposal currently under study, conscientious objectors would no longer be subjected to examination and their alternative service would be only two months longer than military service. As for problems relating to Jehovah's Witnesses, a practical solution had been found based on the legal provision that the military authorities could dismiss people from military service who were unfit for such service.

113. On request, the Austrian people were completely free to seek and impart any information they wished, provided that they did not act contrary to the Penal Code. How information was made available to the public requesting information depended on the circumstances of the case, bearing in mind the interests of the parties concerned. Article 111 of the Criminal Code was essentially a mechanism to defend the reputation of private individuals and there was no intention, at present, to amend it. The violation of public order was not a criminal but an administrative offence and judges and prosecutors were therefore not dealing with questions of public order in the context of article 111.

114. The radio and television enterprise was not a state monopoly but was under a separate broadcasting authority, with a legal entity, which licensed newscasters to collect and broadcast information. A commission, comprised of judges and other individuals, controlled the objectivity of radio and television broadcasts, but its decisions could be appealed. The Government was currently redrafting the anti-monopoly and anti-trust laws in general, with a special section relating to the mass media. The guidelines for granting subsidies to newspapers were not available, but it was clear that the Government had no influence on the editorial policy of new papers receiving such subsidies.

115. As regards article 188 of the Criminal Code, the representative shared the view that the provisions relating to blasphemy were obsolete, but noted that they had been designed to defend public order and tolerance among different religious groups. Article 188 would come into play in the case of public behaviour causing justifiable annoyance and serious irritation to members of a particular religious group, and the article was not inconsistent with article 19, paragraph 3, of the Covenant. In the Lingens case, the European Court of Human Rights had ruled that a distinction would have to be drawn between the substance of information and opinion, which might be shocking and offensive, and the form in which such information or opinion was expressed. Thus, for example, The Satanic Verses would be protected under the special provision for freedom of the arts in Austrian legislation and

article 188 of the Criminal Code would be interpreted in the light of that freedom. On the question of elucidation of the situation of persons having authority over others, the representative explained that children up to age 14 were, as far as religion was concerned, under the authority of their parents.

Freedom of assembly and association

116. With reference to that issue, members wished to know whether any meetings had been broken up by the authorities during the period under review; which formations had been prohibited and which associations had been dissolved; why open-air meetings were not allowed; and why aliens were not allowed to promote, organize or preside over any meetings for the discussion of public affairs.

117. In his reply, the representative noted that freedom of assembly was guaranteed in Austria in accordance with article 21 of the Covenant although 24 hours' notice had to be given to the authorities. Recent cases of meetings being broken up concerned the National Socialist Party which, under constitutional law, was forbidden to meet in Austria. Freedom to form associations was guaranteed and recent bannings related to the creation of neo-Nazi groups and other unconstitutional formations. Restrictions on foreigners with regard to the holding of meetings applied only to the case of interference in public affairs and were consistent with article 16 of the European Convention on Human Rights.

Rights of persons belonging to minorities

118. Concerning that issue, members of the Committee wished to be informed of factors and difficulties relating to the implementation and enjoyment of rights under article 27 of the Covenant; the composition, functions and activities of the Ethnic Group Advisory Councils; and the percentage of persons belonging to minorities who held public office.

119. In his reply, the representative said that Austria had not experienced difficulties in that regard since the provisions of the State Treaty of 1955 went well beyond those of article 27. As 90 per cent of Austria's citizens were Roman Catholic, religious minorities formed only a small proportion of the population and encountered no restrictions in the profession and practice of their own religion. The Government had completed a report on ethnic minorities and would make it available in English in due course. The Ethnic Group Advisory Councils advised the Federal Government and its ministers in matters concerning ethnic groups and sought to safeguard and represent the overall cultural, social and economic interests of the minorities. They were involved in the drafting of any relevant legal instruments and were empowered to make proposals for improvement. The Advisory Councils had the same position, functions and competence with regard to the governments of the Länder. There were four ethnic groups living in Austria - Slovenians, Croatians, Hungarians and Czechs. Financial subsidies were being granted to ethnic minorities and the amount of such subsidies had been increasing. It had not been possible to determine the percentage of persons belonging to minorities in public office as they were hard to identify. Only those who claimed affiliation with a given ethnic group were considered as belonging to that minority group and they were small in number.

Concluding observations by individual members

120. Members of the Committee expressed warm appreciation for the high quality of the report, which was informative and straightforward. They also welcomed the candor and competence of the State party representatives in answering the Committee's questions, which had made for a useful and constructive dialogue.

121. While recognizing Austria's traditions and the Government's efforts to promote respect for human rights, members expressed continuing concern about a number of areas where, in their view, further improvements were needed. One such concern related to the status of the Covenant in relation to Austrian law. It was noted in particular that, as far as grounds for discrimination were concerned, Austrian law was not in complete conformity with the provisions of the Covenant. The incorporation of at least articles 26 and 27 of the Covenant into domestic law was suggested as one possible remedy in that connection. A related concern was the list of Austrian reservations to the Covenant, which members urged the State party to reduce.

122. Other concerns raised by members related to such matters as the independence of the administrative courts; the inadequacy of protection extended to detainees at the interrogation stage; the impartiality of the mechanisms for investigating cases involving alleged torture and ill-treatment by the police; the monopolistic character of the electronic media; and restrictions on speech under article 111 of the Criminal Code, as well as the freedom to impart information.

123. The representative of the State party said the dialogue had been extremely interesting and thanked the Committee for the warm welcome it had accorded to his delegation.

124. In concluding the consideration of the second periodic report of Austria, the Chairman thanked the delegation for its responses to the Committee's questions on an excellent report and requested the delegation to convey the Committee's views to the competent authorities.

POLAND

125. The Committee considered the third periodic report of Poland (CCPR/C/58/Add.10 and Add.13) at its 1102nd to 1105th meetings, on 28 and 29 October 1991 (see CCPR/C/SR.1102-1105). (For the composition of the delegation, see annex VIII.)

126. The report was introduced by the representative of the State party, who pointed out that one of the most crucial problems was to ensure that the rules and standards established by legislation conforming to the Covenant were observed in actual practice. Under the previous system in Poland, all rights and freedoms had been recognized but there had been limitations in practice that had made it virtually impossible actually to exercise such essential rights as the right to freedom of speech, freedom of association and participation in public affairs. Significant changes in the legal system had been made since the formation of the first non-communist Government in 1989, including the abolition of censorship and the one-party monopoly of the press. The independence of the communications media, which had been giving

extensive coverage to human rights issues, was considered highly important in that regard. Another important change had been the establishment of new laws, based on pluralism, for the activities of political parties, trade unions and other associations. In particular, Poland attached great importance to the activities of non-governmental organizations as a means of ensuring the observance of human rights.

127. There had also been a number of changes to protect people from arbitrary or unlawful detention. All detention was now subject to the control of the courts, to which detainees could appeal and, if successful, be granted immediate release. A bill was before Parliament which provided that the courts, not the public prosecutor, were responsible for any decision to hold a person in custody. The police force was being completely restructured. In that connection, a special parliamentary commission had reported on cases in which the former security organs were suspected of causing deaths or committing other serious violations of human rights. Investigations were in process regarding, in particular, 91 cases involving deaths, where the report had recommended that criminal proceedings be instituted.

128. Recognizing the importance of an independent and impartial judicial system in protecting all rights and freedoms, numerous changes had been made in the court system since 1989. They included the establishment of institutional guarantees for the independence of the courts and judges, the broadening of the competence of the courts and the placing of administrative cases under the control of the Administrative Court. A National Council of the Judiciary had been established with the vital task of proposing to the President procedures for the appointment of judges. The election of magistrates by the Supreme Court had been abolished and the new composition of the Supreme Court itself had been announced in June 1990.

Constitutional and legal framework within which the Covenant is implemented

129. With regard to that issue, members of the Committee wished to know the status of the Covenant within the Polish legal system and, in particular, how contradictions between domestic legislation and the Covenant were resolved; what provisions governed the appointment of judges in Poland; the status and functions of the Civil Rights Spokesman as well as the impact of his decisions; whether a case that had been settled could be reopened through an appeal to the Civil Rights Spokesman; the composition and functions of the Social Committee on Human Rights and the Human Rights and Legality Commission; and what progress had been achieved in preparing for Poland's accession to the Optional Protocol.

130. Members of the Committee also wished to know how the conformity of Polish law with the Covenant was assured; whether the provisions of the Covenant on the issue of discrimination would be given constitutional force in Poland despite the discrepancy between them and the provisions of article 81 of the Constitution; whether special courts, referred to in article 56 of the Constitution, still existed; what further amendments to and reforms of the criminal law system were being considered; whether the misdemeanour commissions were independent and what their relationship was with other courts; whether the misdemeanour commissions could impose imprisonment; what the relationship was between the prosecutor's office and the courts; whether there had been any action taken to ensure that fundamental rights enshrined in

the Constitution were no longer regulated at a level below that of the law; what kind of compensation was envisaged for victims of repression during wartime and the post-war period; what controls existed to ensure that the President's decisions on the appointment of judges were not arbitrary; what efforts were being made to disseminate information on human rights at the grass-roots level; how Polish citizens would be informed of the provisions of the Optional Protocol and of their possibilities of recourse to the Human Rights Committee; and what efforts were being made to introduce basic human rights education into school curricula.

131. In reply, the representative of the State party said that the relationship between the Covenant and domestic legislation had not yet been fully decided upon, since it had not been specified clearly in the Constitution. However, the Constitutional Court had stated that the international human rights instruments prevailed over ordinary national legislation. Draft amendments to the Constitution, which would be approved shortly by Parliament, had been prepared with the Covenant as a model. Since Poland became a democratic State in 1990, international legal instruments came increasingly to be regarded as having direct application in the Polish system.

132. The legal tradition in Poland of incorporating, in effect, the provisions of international agreements into national legislation continued to be reflected not only in statute law but also in the judicial precedents of the courts. Thus, for example, article 14, paragraph 1, of the Covenant was invoked in a decision of the Administrative High Court on 5 July 1991 and article 18, paragraph 1, of the Covenant was cited as the basis for a decision of the Constitutional Court on 30 January 1991. The International Covenant on Economic, Social and Cultural Rights has similarly been invoked by the courts. With regard to the status of the Covenant in the Polish legal system, the following rules had been proposed in connection with the drafting of a new Constitution: Polish law should be compatible with international conventions ratified by Poland and with generally accepted international norms; an international treaty ratified by consensus in Parliament should have priority when it was not compatible with national law; and the rights and freedoms laid down in the Constitution should not be interpreted as limiting the human rights enjoyed by individuals under the provisions of international law.

133. The publicity given to the provisions of the Covenant had not been as extensive as it should have been and measures were now being taken to remedy that shortcoming. A joint initiative was under way with the Centre for Human Rights of the Secretariat to strengthen human rights documentation and information services in Poland and the Government was cooperating closely with the Council of Europe and the Helsinki Committee in promoting human rights in Polish schools, law faculties and work-related courses.

134. With regard to judges, the representative of the State party pointed out that judges in all Polish courts were appointed by the President on the motion of the National Council of the Judiciary. The participation of the Minister of Justice in the process was confined to his role as a member of the Council. The Civil Rights Spokesman was an independent agent who, in conformity with the Constitution and the Act of 14 July 1987 as amended by the Act of 24 August 1991, was responsible for monitoring the exercise of rights and freedoms, particularly with regard to the issuing of passports, the activities of the misdemeanour commissions and conditions of detention. The

Spokesman was entitled to act at the request of citizens or on his own initiative and it was his duty to consider whether there had been a violation of the law on the part of State bodies. Judicial proceedings, whether criminal, administrative or disciplinary, could be initiated against those bodies. In 1990, the Spokesman had received more than 40,000 complaints, most of which related to disputes between individuals, and had considered more than 4,800 cases. As a result, the Spokesman had made 164 general presentations questioning the implementation of the law and had submitted 15 motions to the Constitutional Court as well as 4 questions relating to the interpretation of the law.

135. The Social Committee on Human Rights was a registered association which had approached the authorities on a number of human rights issues. They include questions concerning the rehabilitation of victims of Stalinist persecution; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Optional Protocol to the International Covenant on Civil and Political Rights; the rights of individuals to appeal to the Constitutional Court; and matters relating to non-discrimination. The Human Rights and Legality Commission was a body of the Senate responsible for verifying the conformity of Polish law with the two International Covenants and the Universal Declaration of Human Rights and to assess the implementation of those instruments by State bodies. The Commission could also prepare legislation on human rights questions and was entitled to express views on candidates for the office of the Civil Rights Spokesman and on the budgets of various government ministries. Additionally, the Commission disseminated international human rights standards in cooperation with the parliamentary commissions of other countries and with other international human rights bodies.

136. The Optional Protocol had been signed by the President and the instrument of accession by Poland would be deposited with the Secretary-General of the United Nations in the near future.

State of emergency

137. With reference to that issue, members of the Committee wished to know under which circumstances martial law or a state of emergency could be proclaimed; which authority was empowered to take such a decision and the procedures that were to be followed; and what rights could be derogated from during such a situation. Clarification was also requested as to the powers of the police and the military in a state of emergency and whether Polish authorities were considering shifting the authority to order detention during a state of emergency away from the local police to a court.

138. In reply, the representative of the State party explained that, according to the Constitution and applicable law, martial law could be proclaimed by the President of the Republic in all or part of the country if required by external threats to security. A state of emergency could be proclaimed for a period of three months in the event of a threat to internal security or disaster and could be extended by a maximum of three months with the agreement of the Senate and the Diet. The proclamation of martial law or a state of emergency entailed the temporary suspension or limitation of certain fundamental civil rights and permitted house searches, the censorship of correspondence, the monitoring of telephone or telex communications, the

suspension of the rights of association and assembly and a ban on demonstrations. Persons over the age of 18 could be arrested if the authorities considered that they were liable to break the law.

139. In case of a declaration of a national state of emergency for reasons of internal security, the police could take preventative action by questioning persons over the age of 14 who were acting suspiciously or attempting to demoralize the population. Persons over the age of 18 could be arrested, tried and imprisoned if the provincial police commander considered that such persons, remaining free, would jeopardize the security of the State or break the law. Provincial police commanders could also restrict the movements of certain persons, expel them, forbid them to change their place of residence, or forbid the taking of photographs or video recordings. The representative pointed out that, although detention decisions under a state of emergency were not subject to appeal to ordinary courts, they could be appealed to the Administrative High Court. As remedies were still insufficient, further revision would be necessary of the National Emergency Act of 5 December 1983, as amended in 1989.

Non-discrimination and equality of the sexes

140. In connection with that issue, members of the Committee wished to have information on any legal provisions governing non-discrimination and equality of the sexes. Additionally, members of the Committee wished to know what measures had been taken to eliminate discrimination on the grounds of sex, particularly with regard to access by women to some professions and posts and also with regard to salaries and wages; whether any distinction was made between the father and mother regarding the transmission of nationality to children; how the rights of former Communist Party officials were restricted, if at all; and the scope of the exceptions guaranteeing freedom of conscience and religion to aliens and stateless persons.

141. In reply, the representative of the State party said that, although Polish legislation prohibited any type of discrimination, including discrimination based on sex, in practice everything was not perfect. Consequently, statistics for 1990 showed that the percentage of women holding high-level appointments in the Government, for example, was substantially lower than that of men. The figures also showed that, for equal work, the average wage received by women was less than that of men. The Polish authorities were aware that the situation needed to be improved, but current economic conditions offered little scope for manoeuvre. However, the Government had established a special post to study problems concerning women and the family with a view to formulating new policy proposals in this area. Concerning the transmission of nationality to children, no distinction between the father and mother was made in the Polish legal system.

142. In regard to non-discrimination in the guarantee of freedom of conscience and religion, the representative of the State party explained that, under the Act of 17 May 1989, foreigners and stateless persons had equal rights with Poles with two exceptions. First, it was necessary for church authorities to inform the Minister of Trusteeship of an impending appointment of a foreigner to an executive post. The Minister might express a reservation on the appointment to be taken into account by the church authorities. The second exception concerned the requirement that a religious association wishing to

obtain legal personality under Polish law needed, in effect, at least 15 Polish citizens as members.

Right to life

143. With reference to that issue, members of the Committee wished to know the current status of the bill intended to abolish the death penalty; the results, if any, obtained through the activities of the ad hoc commission set up to consider cases of deaths in mysterious circumstances during the 1982-1988 period; and what measures had been taken against environmental pollution to protect the right to life. In addition, members of the Committee wished to know whether any cases of involuntary disappearances had occurred under the former regime; whether Poland had launched any information campaigns on AIDS and its prevention; and how the new bill on the legal protection of unborn children differed from the 1956 Act concerning the termination of pregnancy.

144. In reply, the representative of the State party said that the ad hoc Commission established by the Diet to consider the cases of deaths which might be attributable to officials of the civic militia or the security services had examined 115 of the 120 cases of unexplained death before it. In 24 of those cases the Commission established that there had been no connection with activities of the Ministry of the Interior. In the 91 other cases, the Commission recommended either that the case be reopened if it had been previously dropped or that criminal proceedings be instituted. The Parliament had endorsed the Commission's proposals and ordered the public prosecutor to investigate the cases to identify those responsible. The Prosecutor was required to report on the results of his inquiry by 31 December 1992. With regard to AIDS, Polish authorities had undertaken information campaigns on the disease and its prevention and a great many publications on the subject were available in Poland. On the subject of the termination of pregnancy, the debate in Parliament in 1989 on that complex question had proven inconclusive. The new Parliament, therefore, would have to decide the question.

145. Responding to questions concerning environmental problems, the representative pointed out that 11 per cent of Polish territory was threatened by pollution as a result of the industrialization policy of the former regime. An act on the monitoring by the State of ecological conditions had been promulgated in 1990 and, as a result, industrial polluters had been closed down or otherwise penalized. Other measures recommended in a policy statement adopted by the Government in October 1991 still needed to be implemented. The economic situation posed serious constraints in that respect, although measures such as the conversion of foreign debt into ecological investments, financial assistance from the World Bank and loans granted by the European Community and the 24 most industrialized countries were steps in the right direction.

Liberty and security of the person

146. With regard to that issue, members of the Committee wished to know the impact of the process of reform of criminal law on the implementation of article 9 of the Covenant; the maximum length of pretrial detention; whether there was any provision for a regular review by a court of such detention; the composition and activities of the misdemeanour commissions; and what progress had been achieved in the work on the mental health bill guaranteeing the protection of the rights of persons confined in psychiatric hospitals.

147. In reply, the representative of the State party noted that a number of reforms in the criminal code had been undertaken. As a result, it was now possible for detainees to have recourse to the courts and the principle of compensation had been extended to wrongful detention. Detainees also had to be informed of the reasons for their detention. Under the proposed new provisions of the criminal code, only the court concerned could order pretrial detention for a period of more than three months and not more than six months unless that decision was taken by a higher court. Only the Supreme Court could order pretrial detention for more than one year. In general, the maximum duration of pretrial detention did not exceed 18 months, or 2 years in the case of murder. Only the Supreme Court could extend those periods. The maximum length of pretrial detention was not established by law in Poland. At each stage of the judicial proceedings the detainee had the opportunity to apply for review and to appeal against a rejection of that application. With reference to the right of a suspect to consult a lawyer, the relevant regulations had been changed so that this was now possible without anyone else being present.

148. The bill prepared by the Minister of Justice relating to the protection of mental health was now ready for submission to the Council of Ministers. The original draft of the bill had incorporated a number of progressive measures, including free treatment and free medicine for the mentally ill, special protection for their employment contracts and special social benefits. However, as such proposals would have entailed significant financial implications difficult for the State to bear, some of the provisions of the draft had to be abandoned. The limitation of freedom of persons confined to psychiatric hospitals was an important problem. At present, the lawfulness of such confinement was monitored by the prosecutor. There was an urgent need to amend the regulations of the protection of mental health with a view to ensuring that persons in psychiatric hospitals were treated in accordance with generally accepted international norms. A law on the matter was to be discussed in Parliament in the near future.

Treatment of prisoners and other detainees

149. With reference to that issue, members of the Committee wished to know whether investigations into the cases of ill-treatment mentioned in the report had taken place and, if so, whether any criminal or disciplinary measures had been taken against those found guilty; how extensive was the practice of ill-treatment of persons remanded in custody and what specific measures had been taken to prevent it; the number and nature of protests against abuses of authority by officials submitted under the procedure mentioned in the report; whether prosecution had been initiated against members of the civic militia and security forces suspected of abusing their authority; what had been done in regard to the training of officials having control over detained persons; whether, under the reformed system, the public prosecutor retained the power to limit access to a person held in pretrial detention by his family or defence counsel; what had been done to reduce the length of pretrial detention; whether the human rights of detainees were explained to them; what reforms had been undertaken with respect to the police; and whether there were minimum accommodations standards for detention centres. Additional information was requested on the conditions of detention, especially with regard to detention of juvenile offenders, and on the composition, powers and activities of the Prison Patronage Association.

150. In reply, the representative of the State party pointed out that the civic militia and the security services had been disbanded and that the composition of the police force had changed substantially. The previous force had been dissolved and the new force was now headed by civilians and subject to monitoring by a central body. In cases where it had been established that officials had been neglectful in performing their functions, they had been dismissed. In some cases, criminal proceedings had been instituted and trials were pending. In 1990, 414 complaints of ill-treatment had been filed by persons remanded in custody, 11 of which later proved to be well founded. Penalties had been applied against 21 Prisons Service officers, 6 of whom had lost their jobs. Also in 1990, over 8,000 complaints had been filed against police officers, and disciplinary proceedings had been instituted in 4,000 cases. Some 3,200 officials had already been sentenced and the statistical services of the Ministry of Justice regularly published data on that question. In 1991, the committee responsible for ensuring the implementation of the Helsinki agreements had transmitted to the Polish authorities a list of 93 cases of ill-treatment of detainees by police. An inquiry had shown that there had in fact been 590 cases of that nature; 33 of the cases resulted in charges. In the eight months since March 1991, 17 police or prison officials had been charged for cases of that kind.

151. Among the measures adopted to end the ill-treatment of persons remanded in custody had been the replacement, since 1990, of over 7,000 employees of the Prisons Service. Additionally, 176 high-ranking officials of the Service had been removed from office and another 410 had been reassigned elsewhere. As a result, only 35 per cent of the present officials had been in their posts for over five years. In 1990, professional training courses had been organized for 2,000 prison staff and a further 1,400 staff members had followed such courses in the first half of 1991. In addition, 3,900 persons had taken specialized courses, indicating the importance that the Minister of Justice attached to such training. The Prisons Service in Poland was headed by a scientist trained in social reintegration and rehabilitation. Broad international contacts with prison officials from other European countries were being developed in an effort to ensure that prison standards in Poland were brought into line with international norms.

152. Standards relating to the amount of space for each detainee in a cell were in keeping with international norms. Until 1990, persons could be placed in detention centres belonging to the civic militia, with disastrous consequences for their rights and living conditions. At present, 56,000 persons were in prisons or penitentiary establishments in Poland, whereas only one or two years previously that figure had been over 100,000. Detention conditions had been improved inasmuch as the number of detainees had decreased and pretrial detention was being applied less and less. In the future, no prisoners could be remanded in police cells for longer than 48 hours, after which they had to be kept in prisons under the control of the Minister of Justice.

153. The professional qualifications of doctors working in prisons were often not very good. Many complaints of detainees had proven to be well founded and, as a result, 40 per cent of the senior staff of the Prisons Service had been replaced. Medical chambers had been established to supervise the practice of doctors working in prisons. The number of complaints concerning prison medical services had declined sharply from 860 in 1990 to 299 as at 18 October 1991.

154. The Prison Patronage Association had been established in 1989 and assisted convicted persons in prison establishments on their release and also helped their families. The Association's representatives were allowed to enter prison establishments, could freely contact detainees and obtain information from the Prisons Service. Additionally, the Association had a home for housing detainees without resources on their release from prison and it operated a service to assist with housing and employment problems.

Right to a fair trial

155. In connection with that issue, members of the Committee wished to know what changes had been introduced in the draft code of criminal procedure relating to guarantees for a fair trial; the scope of jurisdiction of the military courts and their position in the court system in Poland; the current mechanisms for legal aid; the experience of the National Judicial Council; and the size of the backlog of cases before the ordinary courts. Members of the Committee also wished to know whether new legislation contained any rule guaranteeing the right not to be compelled to testify against oneself or to confess guilt; whether there was trial by jury; and whether judges in the military courts were required to have any special qualifications. Clarification was sought on the right of judges to question accused persons; on the composition of the various types of courts; and on the role of assessors in the judicial system.

156. In reply, the representative of the State party said that the most important change in the legal reforms now before the Polish Parliament was the provision in the draft code of criminal procedure for wide-ranging intervention by the courts in the pretrial examination of cases. Under that procedure, the courts could question the accused and witnesses, and the accused person himself might request a court hearing or appeal against a failure to investigate his case. The powers of the defence counsel would be broadened and those of the prosecuting counsel reduced. Any court inquiry required the presence of defence counsel and the decisions of the judge were to be pronounced in open court in the presence of all the concerned parties. Court proceedings would no longer be inquisitorial but follow a procedure in which questions could be asked by the prosecution, the defence, the defendant and the judge, in that order. Accused persons would have the right to refuse to make statements. Legal aid was provided by lawyers and legal advisers whose respective professional organizations were independent of the State. About 4,000 lawyers were currently practising and there were approximately 16,000 legal advisers.

157. The composition of courts varied with the type of proceedings. A court of first instance was presided over by one professional judge and two elected, non-professional assessors, except in cases which might carry the death penalty, when there would be two professional judges and three assessors, and appeals cases, where there were always three professional judges. Under the simplified procedure, which was used only for straightforward cases carrying a light penalty, the hearing might be conducted before only one judge. The National Judicial Council, established in December 1989, chiefly considered applications for posts in the judiciary. A recommendation by the Council, consisting of 26 members representing different branches of the judiciary and elected representatives, was necessary for appointment as a judge. Requests were also considered by the Council for assignment to another court or for

extension beyond the normal retirement age of 65 years. A backlog of cases, which was not excessive in number, had resulted from the radical changes being made in the organizational structure of the courts and the judiciary and the increased powers that the courts in Poland had acquired since 1989. It was hoped that, as the reforms in the legal system and judiciary were completed, the courts would return to full effectiveness.

158. Military courts were the only special courts in Poland and their purpose was to provide the judicial machinery to deal with military offences. At present, crimes against the interests of the State were also tried in military courts but, under the proposed new Code of Criminal Procedure, military courts would in the future try military offences only. Appointments to the post of military judge were made on the same basis as for ordinary courts, except that the candidates had to be career officers.

Freedom of movement and expulsion of aliens

159. With regard to that issue, members of the Committee wished to know the period of time needed, under normal circumstances, for the issuance of a passport, the costs incurred and the administrative formalities to be followed; what difficulties were experienced with regard to the securing of permanent residence of Poles domiciled in the Soviet Union; and what the law and practice were in relation to the expulsion of aliens. Members of the Committee also wished to know the numbers and nationality of Arab refugees in Poland and whether they had come to Poland under the auspices of the Office of the United Nations High Commissioner for Refugees (UNHCR).

160. In reply, the representative of the State party said that the new Passport Act of 1990 made it possible for citizens to exercise their right freely to leave and return to Poland. Passports were now issued by provincial authorities and not the police, as had formerly been the case. No complaints of backlogs or excessive delays had been received and many provincial offices issued passports within two weeks of application. Passports were valid for 10 years and remained in the possession of the holder. The large numbers of Soviet citizens of Polish origin applying for permanent residence in Poland had sharply declined by the end of 1990. In all, 20,000 foreigners had been granted permanent residence in Poland. In 1991, 1,600 applications had been received of which over 1,000 had been granted, 37 had been rejected and the remainder were still being processed. Rejection was decided on the grounds that the applicant had nowhere to live in Poland and no source of income.

161. Expulsion of an alien was ordered if there was clear proof that the person had acted against the interests of Poland, had been convicted of an offence, had infringed customs regulations or posed a threat to law and order in a manner specified in the Code of Administrative Procedure. An expulsion order was signed by the provincial governor and an appeal could be made to the Ministry of the Interior or a complaint brought to the relevant administrative court. In cases where an alien refused to comply voluntarily with an expulsion order, the person might be detained at an observation centre. Appeals against expulsion orders and detention could be made to the ordinary courts. With regard to Arab refugees in Poland, most of the several hundred persons concerned were Yemenis who had attempted to reach Sweden via Poland.

Right to privacy

162. With reference to that issue, members of the Committee wished to know whether investigations into cases of unlawful opening of correspondence, telephone-tapping and bugging had taken place; whether any criminal or disciplinary measures had been taken against those found guilty; what measures had been taken to eliminate such devices and the recurrence of such practices; and whether telephone-tapping and bugging, if permitted, had been legalized by the Police Act of 1990.

163. In reply, the representative of the State party said that police activities such as telephone-tapping and bugging were subject to severe restrictions and could be authorized only by the Minister of Justice or at the request of the Minister of the Interior. An inquiry into the cases of telephone-tapping and bugging referred to in the report had been discontinued when it was learned that these devices had not been used. Bugging devices had also been discovered on the premises used by Solidarity during the 1989 presidential election. Following a special appeal made by the Ministry of Justice, the Supreme Court had overruled the decision by a district court to close the proceedings and the case was to be reviewed.

Freedom of religion and expression

164. In connection with that issue, members of the Committee wished to know the legal restrictions, invoked on grounds of public safety, order, health or morals, or the rights and freedoms of others, that had been placed on individuals or groups in expressing their religious beliefs; the length of community service as compared to the length of military service; the progress achieved with regard to the implementation of the rights and freedoms provided for under article 19 of the Covenant, in particular in the light of the reform of the Penal Code and the criminal law; developments related to the implementation of the Press Act as amended by the Act of 11 April 1990; and whether the fact that the Press Act was now in force meant that inciting others to commit offences or praising others for having committed offences was prohibited.

165. Members of the Committee also wished to know what control, if any, was exercised by the Government on television broadcasting; to what extent authorities were obligated to provide information being sought by a citizen; whether Catholicism had been accorded a special status as the State religion or if all faiths were on an equal footing; and whether the importation of foreign publications or the activities of foreign correspondents were in any way restricted.

166. In reply, the representative of the State party said that there were no restrictions on religious belief or worship or on associations formed for that purpose. Acts of parliament had been prepared or adopted in relation to a number of churches, such as the Roman Catholic, Orthodox and Evangelical Churches, particularly in cases where church property had been nationalized earlier. Catholicism, which was not a State religion, accounted for 90 per cent of the population, with 65 other registered religious communities accounting for the remaining 10 per cent. Military service at present lasted 24 months and community service 36 months, although measures already adopted would change that to 18 months and 24 months, respectively. Regarding the

Press Act, the elimination of censorship had resulted in the appearance of a large number of new publications reflecting a wide range of opinion. During the first 9 months of the year, 36 libel cases had been brought against journalists, reflecting the philosophy underlying the abolition of censorship, namely that people were now expected to assume responsibility for their words and deeds. The Control of Publications and Productions Act had been repealed, thereby ending preventive censorship, but inciting others to commit offences and praising others for having committed offences were now punishable under the Code of Criminal Procedure.

167. Restrictions on the exercise of the freedom of expression set out in the 1989 Act amending the Control of Publications Act had recently been repealed. Censorship had been completely abolished and the restrictions described in paragraph 123 of Poland's report were no longer in force. Those restrictions unfortunately still formed part of the Code of Criminal Procedure but a broad revision of the Code was currently taking place. In any event, there had been no convictions on the basis of those provisions. Television broadcasting was still a State monopoly as an act on private television and radio broadcasting had not yet been adopted by Parliament. Anyone refused access to information had the right to appeal to an administrative court. There was no restriction on the import of foreign publications, which were readily available at newsstands, nor were there restrictions on foreign correspondents.

Freedom of assembly and association

168. With reference to that issue, members of the Committee wished to know the composition and powers of the administrative bodies that were competent to monitor the activities of associations; the relevant legal provisions governing the registration of associations; what criteria were used to determine the restrictions necessary for the protection of public order; and in what specific cases meetings had been prohibited. Further information was also requested on the right of members of the police force and prison service to form trade unions.

169. In reply, the representative of the State party said that the authority competent to deal with the monitoring of the activities of associations was the provincial governor, who reviewed applications for registration submitted by associations. The administrative authority could revoke any provision in the regulations of an association not in conformity with its statutes and could request a court to dissolve an association if it infringed upon the law, if its numbers fell below the level required by law, or if it had no leadership. The prohibition of meetings was severely restricted, and any exceptions were subject to review by the courts. In that regard, the inclusion of the general clauses of the Covenant into national law served to protect the rights and freedoms of individuals. Police and prison officers were able to join a union but they did not have the right to strike. The right to join trade unions did not extend to frontier guards, officials of the Office for the Protection of State Officials, civil servants or professional soldiers.

Right to participate in the conduct of public affairs

170. In connection with that issue, members of the Committee wished to know the current status of the law on political parties and whether the Polish

Government was considering prohibiting political parties that advocated national, racial or religious hatred constituting incitement to discrimination, hostility or violence or which were responsible for propaganda for war in violation of article 20 of the Covenant.

171. In reply, the representative of the State party said that political parties were governed by a law enacted in 1990, requiring that all parties be entered into a registry deposited with the provincial court in Warsaw. Only the Constitutional Court was empowered to refuse to register a party furnishing the required documents. Such refusal could be invoked only if the party aimed at changing the constitutional order by force or if the leaders of the party sought to use violence in public life. Forty parties had been registered in 1990 and 51 applications for registration had been received in the first half of 1991. It was the responsibility of the Constitutional Court to decide if a party was conducting unconstitutional activities and to recommend a change in the party's statutes or programme.

Rights of persons belonging to minorities

172. With reference to that issue, members of the Committee wished to have information on ethnic, religious and linguistic minorities in Poland and regarding measures taken to guarantee their rights under article 27 of the Covenant; on the composition and powers of the National and Ethnic Minorities Commission; and on the situation of gypsies in Poland. Further clarification was sought concerning the possibility of minorities receiving general education instruction in their mother tongue.

173. In reply, the representative of the State party said that there were numerous ethnic minorities in Poland, representing a total of 800,000 persons and including 300,000 Ukrainians, 250,000 Belarusians, 200,000 Germans, 20,000 Lithuanians and 15,000 Jews. The National and Ethnic Minorities Commission, which was chaired by the Minister of Culture and the Arts, was responsible for programming State policy and initiatives and for coordinating the administration's actions with regard to minorities. An essential aspect of that policy was to guarantee ethnic minorities the possibility of studying in their mother tongue, although that was easier to provide for those minorities which were not highly dispersed. There were a total of 197 schools where minority languages were taught. Minorities were entitled to set up associations and the State budget provided them with funds. Minorities participated in local government through territorial self-management and the membership of commune-level administrative bodies included minorities. Ethnic minorities were now entitled to days off to observe their religious holidays even if those holidays did not coincide with the official holidays in Poland. A special commission had also been set up in the Diet, composed of about 20 delegates, who met regularly with minority representatives.

174. There were between 10,000 and 15,000 gypsies in Poland, although their numbers were decreasing owing to immigration to Germany. A gypsy publication, sponsored by the Ministry of Culture and the Arts, had appeared in Poland for the first time in 1990. Many gypsy children did not attend school and efforts were being made to set up special classes for them. Consideration was being given to the teaching of the gypsy language in Polish schools. A special commission was inquiring into recent violence in Poland directed at gypsies and their property. The authorities had strongly condemned those acts and

criminal proceedings had been instituted against 16 persons suspected of being responsible. It was felt that the incidents did not represent a general attitude of intolerance towards gypsies in Poland.

Concluding observations by individual members

175. Members of the Committee expressed their thanks to the representatives of the State party and welcomed the excellent dialogue that had been established between the Polish delegation and the Committee. In view of Poland's economic difficulties and its totalitarian past, the efforts of the country's authorities to implement international human rights instruments and carry out democratic reforms were all the more praiseworthy. The detailed information provided by the delegation on the implementation of the new laws adopted in Poland had given the Committee a better understanding of the process to bring those laws more into line with the provisions of the Covenant. Poland had made impressive progress in that regard in very little time. The important role played by the Civil Rights Spokesman, the steps taken to ratify the Optional Protocol, and the submission of a large number of bills to amend legislation so as to ensure greater respect for human rights were also noted with satisfaction.

176. At the same time, members of the Committee expressed concern over the treatment of detainees in Poland. The prolongation of pretrial detention, which could last up to two years, was excessive and inconsistent with the provisions of the Covenant. Legislation should be amended in such a way that questions relating to family visits and access to a lawyer would not be settled by the public prosecutor, but by the courts. New legislation should also provide for the possibility of filing an appeal against a decision to place a person in a psychiatric institution, in keeping with article 9 of the Covenant. In the current process of amending the Constitution, the principle of the presumption of innocence, enshrined in article 14, paragraph 2, of the Covenant, should be given due attention.

177. With regard to the implementation of article 19 of the Covenant, the replies given did not appear to be entirely satisfactory and it would be helpful if the Polish authorities would again define the criteria applied in restricting freedom of expression. Concern was voiced in particular over the Act of 29 May 1989, limiting freedom of expression in certain areas. It was also noted that legislative provisions restricting the freedom of television stations and of publications undermined freedom of expression and should be revised.

178. Members of the Committee also expressed concern regarding the treatment of minorities. The Polish Government should take all necessary measures for dealing with that issue, particularly by strictly observing the provisions of the Covenant. It would also be advisable to enact a law in Poland prohibiting the legalization of political parties that violated article 20 of the Covenant by inciting people to violence or advocating racism.

179. The Polish delegation had given a remarkably frank description of the human rights situation in Poland and the changes that had occurred in recent years. It was hoped that the Polish Government would take the Committee's observations into account when continuing its restructuring of the Polish legal system.

180. The representative of the State party noted that the report just considered by the Committee was the first one to be prepared by Poland under democratic conditions. She sincerely thanked the members of the Committee, who had thoroughly and sympathetically analysed the report and who had not hesitated to point out gaps. The remarks, doubts and concerns expressed would help the Polish authorities to improve their legal system and implement it better. She hoped that Poland's valuable relations with the Committee would not be limited to submitting reports and that Poland would shortly accede to the Second Optional Protocol aiming at the abolition of the death penalty.

181. In concluding the consideration of the third periodic report of Poland, the Chairman joined in paying tribute to the remarkable progress made in Poland since the submission of that country's previous report five years before. Thanks to those developments, Polish practice and legislation had become more consistent with the Covenant and obvious progress had been achieved not only regarding civil rights but political rights as well. Countries like Poland, which were undergoing deep upheavals, often failed to submit their reports to the Committee in order to avoid revealing their difficulties and exposing themselves to criticism. Yet the Polish authorities had allowed the Committee to study the situation in their country at a crucial time, precisely when such an exercise could be the most useful. He was convinced that Poland's fourth periodic report, due in 1994, would indicate still further progress.

IRAQ (continued)

182. The Committee resumed and completed its consideration of the third periodic report of Iraq (CCPR/C/64/Add.6) at its 1106th to 1108th meetings, held on 30 and 31 October 1991 (CCPR/C/SR.1106 to 1108). 9/ (For the composition of the delegation, see annex VIII.)

183. In his introductory statement, the representative of the State party drew the Committee's attention to a number of important developments in the field of human rights that had occurred in his country since the consideration of the first part of the report. Much of the legislation objected to by the Committee had been repealed. Decree No. 416 of the Revolutionary Command Council had thus been suspended, the Revolutionary Court had been abolished and a decree had been adopted granting amnesty to persons convicted of political crimes, from which 187 persons had benefited. Furthermore, a law on political parties had come into effect on 16 September 1991. A Code of Human Rights, setting out provisions of international human rights instruments as well as those of Iraqi legislation, was in preparation, which would serve as a basis for incorporating such international standards into domestic law. Lastly, there was a continuous dialogue between the Government and the Kurds to seek an improved formula for greater autonomy for Iraqi Kurdistan.

184. Referring to a number of questions that had been left unanswered at the Committee's forty-second session, the representative stated that, following the cease-fire with the Islamic Republic of Iran in 1988, the number of death sentences passed in Iraq had declined markedly, and the decline had continued in 1991. He noted, in that regard, that 1,714 death sentences had been passed in the period 1987-1991, of which 1,223 had been carried out and 330 commuted to life imprisonment, with 161 persons having been pardoned. Revolutionary

Command Council Decree No. 840 of 1986 and article 200 of the Penal Code, relating to severe life sentences, were currently under consideration for repeal.

185. Observing that economic, social and cultural rights and civil and political rights were closely interrelated, the representative said that the current blockade of Iraq was posing a danger to the right of people, particularly children, the elderly and the sick, to health, food and other basic needs. Furthermore, the shortage of medicines and pesticides had increased the incidence of disease. Cases of typhoid, hepatitis and cholera had sharply increased and infant mortality had risen from 5 to 21 per 1,000 between August 1990 and August 1991. Those circumstances had to be taken into account by the Committee in analysing the situation in Iraq. Since it was impossible to enjoy civil and political rights while being denied economic, social and cultural rights, the economic blockade should be lifted so that the Iraqi people could enjoy all their human rights.

Constitutional and legal framework within which the Covenant is implemented

186. With regard to that issue, members of the Committee wished to receive information concerning developments, if any, that had taken place since the submission of the report regarding the promulgation of a new constitution and its adoption by referendum; the relationship between the Revolutionary Command Council, the Cabinet, the Office of the President and the National Assembly and their respective roles in so far as the implementation of the Covenant was concerned; the results of the examination by State organs subsequent to 1 April 1991 of wartime laws and regulations with a view to their abolition; and concerning persons characterized as "rioters" throughout the report.

187. In addition, members wished to know what concrete measures had been taken in order to attain the Government's objectives of reconstruction, the establishment of democracy and a multiparty system, freedom of association, freedom of the press and the supremacy of law; whether the Covenant had specifically been taken into consideration in drafting the new Constitution and the law on political parties; whether the Covenant had been incorporated into Iraqi law and could be invoked before the courts; and what the remaining restrictions were under the state of emergency. It was also asked whether abuses committed by Iraqi military forces in Kuwait had been investigated; how many political parties had been created after the introduction of the multiparty system by Act No. 30 of 1991; why only 187 people had benefited from the amnesty decree of 21 July 1991 as compared with a total of 14,000 detainees who had benefited from previous amnesty decisions; and what the legal basis was for holding United Nations experts against their will. In addition, members questioned whether concentrating legislative and executive powers in the hands of the Revolutionary Command Council was in conformity with the Covenant.

188. Regarding the deterioration of the situation of the Kurds in northern Iraq, it was asked whether any military operation directed against them was under consideration. Concern was also expressed over the situation of some 50,000 Shiite refugees in the southern marshes and clarification was requested regarding the extent to which the Government was cooperating with international organizations in those areas. Information was further requested regarding the number of Kurdish and Shiite detainees, their treatment and the remedies that were available to them.

189. In his reply, the representative of the State party explained that, since the submission of the report, the law on political parties had been adopted and that the proposed new Constitution was to be submitted for approval in a referendum once the National Assembly had completed its discussion on it. Under a general rule embodied in a law, international instruments were considered as an integral part of domestic legislation. The purpose of drafting a code of human rights was precisely to clarify that point for those who applied the law and to remedy shortcomings in national legislation that might be inconsistent with international instruments. The Covenant was now considered to be part of Iraqi legislation and its provisions could be invoked by private individuals before the courts. A number of laws had been repealed, including Decree No. 461, thereby abolishing the Revolutionary Court. A review of all crimes carrying the death penalty was also being undertaken.

190. Responding to questions regarding the constitutional structure of the country, the representative explained that the National Assembly examined draft laws submitted to it by the Revolutionary Command Council. In the event of a divergence of views between those bodies, a joint meeting would be held at which a decision was taken by a two-thirds majority. A completely different constitutional structure was, however, to be put in place under the new Constitution. The "rioters" referred to throughout the report were persons who in the course of rioting were accused of having committed serious crimes against the State and private individuals that were punishable under the Penal Code. Some 14,000 out of a total of 15,000 had been released as a result of an amnesty, while investigations had been completed in respect of approximatively 1,000 persons, allowing them to be brought to trial. One hundred and eighty-seven persons, who were guilty of political offences and who had been incited to riot by external elements, had been excluded from the amnesty.

191. Military forces were positioned in northern Iraq, which formed an integral part of Iraqi territory, in order to demonstrate Iraq's sovereignty in the area. The situation in that area was unstable and a matter of concern. There had also been confrontations between the Kurdish parties themselves and clashes had occurred as a consequence of the pursuit by foreign forces of Kurds withdrawn into the mountain regions. The Government was, however, continuing a constructive dialogue with the Kurds in order to regularize their situation within Iraq. When disturbances occurred, causing deaths in that part of the country, the authorities could not avoid their responsibility or cease to guarantee security throughout the national territory. Moreover, the Government had to see to it that the northern region of the country benefited from all the public services that were available in the other regions.

192. Referring to the situation in the Basra region where 50,000 Shiites lived, the representative stated that Iraq had always cooperated actively with international organizations working there. The situation of Shiites could not be regarded as special in character since, under the Iraqi Constitution and laws, the equality of all communities and denominations was guaranteed. The fact that the people in that region were Shiites bore no relationship to the actions by the authorities, which had been rendered necessary by the riots that had been raging in that area.

193. Referring to the alleged detention of experts of the International Atomic

Energy Agency, the representative said that those experts had not been subjected to administrative detention. In the course of their research into Iraq's nuclear programme, the experts had taken possession of a large number of personal files belonging to Iraqi scientists and had tried to seize them. The authorities had simply prevented the experts from leaving the location until they had returned the files in question.

Self-determination, state of emergency and non-discrimination

194. With reference to that issue, members of the Committee wished to receive clarification of proposals aimed at enhancing the autonomy of Iraqi Kurdistan; of the actual state of the relationship between the Government of Iraq and the Kurds; the events of 2 August 1990, in the light of Iraq's obligations under article 1, paragraph 1, of the Covenant; and concerning the current situation of Shiites in the south of Iraq. They also wished to know why, in view of the troubles and uprisings that had occurred, Iraq had not declared a state of emergency and had not followed the notification procedure laid down in article 4, paragraph 3, of the Covenant; what status was accorded to the rights enumerated in article 4, paragraph 2, of the Covenant; what safeguards and effective remedies were available to individuals during a de facto state of war; and what specific measures had been taken to avoid any discrimination in the distribution of food and medicine and what mechanisms existed to ensure fair distribution.

195. Noting that the right of self-determination applied not only to colonial situations but to other situations as well and that the people of a given territory should be allowed to determine their economic and political destiny, members also requested clarification of the position of the authorities concerning the autonomy of Iraqi Kurdistan, particularly in the light of article 5 (b) of the Constitution, which recognized the national rights of the Kurdish people and the legitimate rights of all minorities within Iraq.

196. In his reply, the representative of the State party said that the question of enjoyment of rights by Iraqi Kurds was not an issue of self-determination under international law, but one of the rights of persons belonging to minorities, as embodied in article 27 of the Covenant. Article 5 of the Constitution highlighted that difference by stressing the unity of the Iraqi people, which consisted of two main ethnic groups, together with a number of other ethnic groups. The objective pursued by the law on autonomy had not been attained because many obstacles - some of them attributable to external factors connected with relations with neighbouring States - had served to slow down the process. That law was being revised and its provisions would be strengthened to ensure enjoyment by the Kurds of their rights, in conformity with the Constitution and Iraqi law. The Iraqi authorities had fully accepted the United Nations Security Council resolutions as well as the measures ensuing therefrom and had expressly undertaken to apply them. Following Security Council resolution 661 (1990), the Iraqi authorities had put in place a general scheme which guaranteed a minimum food supply to all citizens regardless of the region where they lived.

197. Responding to other questions, the representative said that a state of emergency had not been proclaimed in Iraq, either during the war with the Islamic Republic of Iran or the Gulf war, since the Government had felt that ordinary legislation should remain in force. A few legislative texts of a

provisional character had been promulgated but they did not have the effect of suspending the exercise of the rights proclaimed in the Covenant. The Constitution and the social system of Iraq did not allow for any discrimination because Iraq consisted of a network of very diverse communities, which made for national unity. The Shiites were not subjected to any discrimination, lived throughout the whole of the country and did not have a special region reserved for them.

Right to a fair trial

198. With regard to that issue, members of the Committee wished to know whether legal deadlines, including the deadlines for appeals against judgements and decisions established by the Code of Civil Procedure, the Penal Code and any other law, had been re-established as of 30 April 1991 and what had been the consequences of the suspension of the rights of plaintiffs. In the light of the dissolution of the Revolutionary Court and the establishment of the Administrative Causes Court, they also requested information concerning the organization, independence and impartiality of the judiciary; procedures for the appointment and removal of judges; the scope of article 30 of the Public Prosecution Act as amended by Act No. 5 of 7 January 1987, in particular with regard to the right to have one's conviction and sentence reviewed by a higher tribunal; and the meaning of the statement in the report that an appeal could be made irrespective of the expiry of any legal deadlines. In the latter connection, members inquired whether an appeal could be made only when national interest, State property or public order was concerned.

199. In addition, members requested additional information concerning the study referred to in paragraph 48 of the report; and about the competence and training required of candidates for appointment to the Court of Cassation. They also wished to know why a member of the State Council, who was not a judge, could exercise the functions of president of a court; whether all ad hoc courts had been abolished along with the Revolutionary Court; and whether the draft Constitution defined the functions of the judiciary or left the matter to be dealt with by ordinary legislation, as at present.

200. In his reply, the representative of the State party stated that Revolutionary Command Council decision No. 48 of 20 February 1991 had ceased to have effect on 30 April 1991. Time-limits for appeals, which had been suspended by that decision in disregard of the rights of litigants, had subsequently been extended so that those concerned could effectively exercise their right to a remedy. The dissolution of the Revolutionary Court and the revision of the emergency measures had made it possible to give back to the ordinary courts their jurisdiction in all areas as well as to strengthen the role of those courts in protecting human rights. The Administrative Causes Court had been established to examine complaints by persons who considered themselves to have been injured by administrative decisions taken against them by the authorities.

201. Referring to the organization of the judiciary, the representative explained that the Constitution set forth the major principles to be observed with regard to the independence of the judiciary, the jurisdiction of the courts and the rights of litigants, but that all questions relating to the appointment, removal, remuneration and conditions of work of judges were

governed by relevant laws. The independence of justice and the neutrality of judges were guaranteed by the law of 1987 on the organization of the judiciary. The only authority having power to remove a judge was the Commission on Cases concerning Judges and Magistrates, which consisted of jurists belonging to the Bar. That Commission could recommend the dismissal of a judge if it found that he had dishonoured his profession or was unfit to continue to perform his functions because of considerations relating to integrity or competence. The Government made no recommendations with regard to the appointment of judges, who were chosen from among lawyers or other candidates selected by the Council of the Legal Institute, a totally independent body headed by a judge or a prosecutor. The law providing for the Administrative Causes Court to be headed by a member of the Council of State reflected a departure from the principle that all members of courts should be judges. That constituted a problem that deserved to be thoroughly addressed.

202. Responding to other questions, the representative explained that the power of the Director of Public Prosecutions to appeal against a decision taken in breach of the law and to the detriment of the national interest, State property or public order had been provided for under an amendment made in 1987 to the Public Prosecution Act. No special courts existed in Iraq and the prerogatives of the Revolutionary Court had been transferred to the ordinary courts in accordance with their respective areas of jurisdiction and geographical distribution.

Freedom of movement and expulsion of aliens

203. In connection with that issue, members of the Committee wished to know what legal provisions governed the expulsion of aliens; whether an appeal against an expulsion order had suspensive effect; what legal provisions governed the freedom of movement of aliens in the country; what had been the legal basis for the restriction of freedom of movement of aliens subsequent to 2 August 1990; what the basis was for the formulation of the measures applied in August 1990 by the authorities; and whether there had been any mass movements in Iraq during the period under consideration. In addition, further information was requested regarding freedom of movement of Iraqi citizens within the country.

204. In his reply, the representative of the State party said that aliens who had been legally authorized to enter Iraq could move freely within the confines of Iraqi territory. Certain zones, such as military bases and strategic laboratories, were forbidden to both Iraqi citizens and aliens. Article 11 of the Act governing the residence of aliens empowered the Director General of the responsible service to order the expulsion of an alien, who could then appeal against that decision to the Minister of the Interior within 15 days of its notification.

205. Referring to the restrictions placed on the freedom of movement of aliens in Iraq after 2 August 1990, he explained that such restrictions had constituted extraordinary measures applied in exceptional circumstances. The aliens concerned had not been placed in enforced residence in particularly uncomfortable places. The authorities had thus followed the principle whereby an exceptional situation called for exceptional measures. In any case, no national of a third country residing in Iraq had suffered from those measures and all the persons concerned had been able to leave Iraq eventually, so that when the war broke out no aliens were still being retained in Iraq.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

206. With reference to that issue, members of the Committee wished to receive information concerning registration or other procedures relating to the recognition of religious denominations and any difficulties encountered in that regard; recently drafted legislation relating to the press; and about controls exercised under the law on the freedom of the press and the mass media, including possible censorship. In addition, they wished to know how the right to seek information was ensured in Iraq; whether television and the audiovisual media were privatized or State controlled; what the extent of censorship was and whether the Government was considering any review of its use; whether dissemination of information not forming part of the "Islamic heritage" could be restricted; and, in general, whether Iraq was considering any measures to allow greater freedom of expression in the future. In addition, clarification was requested, in the light of article 19 of the Covenant, of the circumstances surrounding the condemnation and execution of a certain journalist.

207. In his reply, the representative of the State party said that there were 17 officially recognized religious communities in Iraq that enjoyed support from the authorities without any discrimination. In keeping with its Constitution, Iraq guaranteed respect for all religions and permitted individuals to embrace the religion of their choice. At the same time, Islam was the official State religion.

208. The draft legislation relating to the press would be submitted shortly to the National Assembly with a view to its promulgation. Although there was an official control service for the media, there was no longer any censorship and the restrictions that had been imposed on the activities of foreign correspondents because of the exceptional situation created by the war had been lifted. It had been very difficult to guarantee total freedom of expression, even though it had been provided for in the Constitution, during the war between Iraq and the Islamic Republic of Iran, and in any event such freedom could be exercised only in compliance with rules governing morals and public order. The country was, however, trying to establish modern constitutional structures and, to that end, legislation permitting a multiparty system had been promulgated which allowed all political parties the right to publish their own magazines or journals.

209. Owing to Iraq's level of development, there were no private television or radio stations in the country, although they were not prohibited by law. Iraq was also endeavouring to revive its Arab Islamic culture and to teach the precepts of that civilization through radio and television. The journalist who had been sentenced to death and executed had not entered Iraq to express his views, but to obtain secret information in parts of the country that were off limits to journalists on account of the military installations there. He had been found guilty of espionage.

Freedom of assembly and association and right to participate in the conduct of public affairs

210. Regarding those issues, members of the Committee wished to know whether recently drafted legislation relating to the freedom of political parties had

entered into force; whether the law that made it a serious crime fraudulently to join the Baath Party or to defect from it had been abolished; what legal and practical consequences were attached to membership of professional federations, trade unions, associations and clubs; what the criteria and procedures were for the registration of associations and trade unions; how equitable access of members of minority groups to public service was ensured; and what the expected consequences were, on citizens in the conduct of political life, of the adoption of a new constitution and a new law on the freedom of political parties.

211. In addition, it was asked how the members of the National Assembly had been elected; whether it was intended to hold new elections following the promulgation of the new Constitution; whether any changes in the regulations for the holding of elections were under consideration; and how Act No. 30 of 1991 would operate, given the special position of the Baath Party under article 38 of the Constitution. Clarification was also requested of the purpose of the amendments to the National Assembly Act, according to which the Assembly could remove a member by challenging his good standing.

212. In his reply, the representative of the State party explained that Law No. 30/1991 on political parties had been promulgated and was now in force. That law guaranteed the equality of all parties, which had full freedom to establish themselves and to publish their literature, and would lead to an increase in the number of political parties and hence to broader participation by Iraqi citizens in public life. The new Constitution, when promulgated, would certainly be in line with the principles of that Act and would provide an appropriate framework for the encouragement of a multiparty system and consequently a diversity of ideas and opinions. Although nothing was yet known as to the place that was to be attributed under the new Constitution to the party in power, it would be inconceivable for the Constitution to make a distinction between the various political movements. While membership of professional federations, trade unions, associations and clubs had formerly been compulsory for technical and professional reasons, membership had now been made optional in the context of complete freedom of the individual. Equality of citizens and equal opportunities were guaranteed under article 19 of the Constitution and in no case could access to public office be based on adherence to any religion, belief or group. All Iraqi citizens had the right to challenge the good standing of any member of the National Assembly.

Concluding observations by individual members

213. Members of the Committee expressed their appreciation to the representative of the State party for his cooperation in presenting the third periodic report of Iraq and for having engaged in an open dialogue with the Committee. Although the report had been somewhat overdue, great efforts had been made in difficult circumstances to submit it on time. Information had been updated as requested and efforts had been made to provide the Committee with answers to its questions. Furthermore, a certain degree of progress in the implementation of the Covenant had been noted, including drafting a code of human rights, abolishing the Revolutionary Court, moves towards permitting the establishment of political parties, formulating a new constitution and adopting an amnesty law. Iraq was thus making an endeavour to bring its domestic law into line with the Covenant and was taking some steps towards pluralism and democracy.

214. While welcoming those measures, members regretted that many of their questions had not received satisfactory replies and felt that the rights specified in the Covenant were neither adequately protected nor properly implemented. Serious concern was expressed, in particular, regarding the treatment of Kurds in northern Iraq and of Shiites in the south. The Government's interpretation of article 1 of the Covenant in that regard was not convincing. Furthermore, massive violations of human rights had occurred following the invasion of Kuwait. Deep and serious concerns were also expressed in respect of the legislation relating to the death penalty; the disappearance of persons, summary executions, torture and arbitrary arrests; the lack of independence of the courts; the limitations on the exercise of the freedom of expression, association and assembly; the lack of separation of powers; the position of the Baath party in law and in fact; and the excessive concentration of power in the hands of the Revolutionary Command Council.

215. With regard to the constitutional structure of the country, it was noted with regret that work on drafting a new constitution had slowed down. It was further observed that the law on political parties would remain a dead letter until the existing Constitution was amended and a multiparty system was established. Members also noted that the present Constitution contained a number of provisions that could lend themselves to violations of human rights, referring in that connection particularly to articles 38 and 40 of the Constitution, which differed significantly from the provisions of the Covenant. The retention of such provisions could lead to violations of, or restrictions on, proclaimed rights.

216. While members agreed that the population was clearly suffering greatly as a result of the war and the subsequent international sanctions imposed on Iraq, they emphasized that the war had been unleashed by Iraq through its attack on Kuwait. Claiming the war as the cause of difficulties in implementing civil and political rights in Iraq did not diminish the Iraqi Government's responsibility for the human rights situation. Furthermore, although it was obvious that there was a link between political and civil rights, on the one hand, and economic, social and cultural rights, on the other, all the shortcomings in the protection of the rights set forth in the Covenant could not be attributed to the economic situation prevailing in the country. The discrepancy between the provisions of the Covenant and the law and practice in Iraq during the period under review was itself one of the contributing factors that caused the war.

217. The representative of the State party said that the dialogue with the Committee had been most useful and expressed his delegation's thanks for the understanding and patience shown by the Committee. Iraq would take encouragement from it in continuing its efforts to build a constitutional and democratic society. He was also grateful for the sympathy the Committee had shown for the deep suffering imposed on the Iraqi people by the economic sanctions and trade embargo, which constituted an unavoidable obstacle to the enjoyment of human rights in Iraq.

218. In concluding the consideration of the third periodic report of Iraq, the Chairman also thanked the Iraqi delegation for the sincere efforts it had made to answer the many questions asked during a lengthy exchange of views that had extended over two sessions. The Committee's concerns were very serious as they related to a situation in which human rights were not being observed.

Although Iraq was facing very difficult conditions that had resulted from the war and the present economic situation, those tragic circumstances could not dispense the Government of Iraq from its obligations under the Covenant. Accordingly, he expressed the hope that the concerns expressed by members of the Committee would be conveyed to the Government and would contribute to an improved observance of human rights in Iraq.

ECUADOR

219. The Committee considered the third periodic report of Ecuador (CCPR/C/58/Add.9) at its 1116th to 1119th meetings, on 6 and 7 November 1991 (CCPR/C/SR.1116-1119). (For the composition of the delegation, see annex VIII.)

220. The report was introduced by the representative of the State party, who noted that great efforts had been made by Ecuador in recent years to promote human rights. The feeling of insecurity and the climate of fear that had prevailed in the period 1984-1988 had been replaced by a tolerant democratic system and by a peaceful attitude on the part of the present Government. Isolated cases of human rights violations still occurred, however. Where certain authorities had in some way been involved in such cases, because of the low level of awareness of some members of the police force and the difficulties involved in changing their mentality, the Government had acted forcefully and responsibly against them.

221. Referring to a number of important developments in the field of human rights that had occurred in his country since the submission of the report, the representative explained that on the basis of a report from an international commission set up to investigate the cases of two young Colombian brothers who had disappeared in Ecuador, the Criminal Investigation Service had been dismantled and replaced by a judicial police body. In addition, a number of police officers involved in the tragedy had been arrested. An Office of Director-General for Human Rights, which had benefited from United Nations assistance, had also been set up within the Ministry of Foreign Affairs. One of its achievements had been the adoption of specific policy changes relating to social rehabilitation, which included the reconstruction of the country's detention centres. An agreement allowing the International Committee of the Red Cross to interview prisoners had also been concluded and training courses in human rights for members of the armed forces and the police had been instituted. A comprehensive review of criminal legislation and procedures was also to be conducted. Additionally, the Government had concluded a peace agreement with certain guerrilla groups, which had subsequently been disarmed and disbanded.

222. Another important human rights development in recent years had been the initiation of a dialogue with indigenous communities. Following the largest uprising of indigenous peoples in Ecuador's history in 1990, a dialogue was undertaken with the leaders of the Indian community, which had proved to be very fruitful. In-depth and far-reaching reforms had been adopted, including the introduction of bilingual education and the donation of over 1 million hectares of land.

Constitutional and legal framework within which the Covenant is implemented and state of emergency

223. With regard to that issue, members of the Committee wished to know what the constitutional standing of the Ad Hoc Commission on Human Rights was; what action had been taken to follow up its proposals; whether there were any cases in which offences against constitutional freedoms had been punished; what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol to the Covenant with regard to Ecuador; whether the reasons for declaring a state of emergency referred to in the report were consistent with the provisions of article 4 of the Covenant; what rights had been derogated from and what remedies were available during the states of emergency. Members also wished to receive information, in the light of article 141 of the Constitution, on the status of the Court of Constitutional Guarantees and asked what action had been taken as a result of its recommendations.

224. In addition, members inquired what the exact position of the Covenant was within the Ecuadorian hierarchy of norms and whether provisions of the Covenant could be invoked before the Court of Constitutional Guarantees; how many complaints had been referred to the Inter-American Commission on Human Rights; whether former officials of the Criminal Investigation Service had joined the new judicial investigation service; and why cases of violations of human rights were still occurring. Concerning the Ad Hoc Commission on Human Rights, members wished to receive information about its functions and activities, the impact of its decisions on law and practice, and about the number of complaints that had been submitted to it. Further information was sought as to the applicable procedure and the competent authorities for obtaining compensation pursuant to article 9, paragraph 5, of the Covenant in respect of the Bolaños case and, in particular, about the measures that had been taken by the authorities to grant Mr. Bolaños compensation.

225. With regard to article 4 of the Covenant, it was asked whether the Government had always made use of the notification procedure laid down in paragraph 3 of that article. Clarification was also sought as to the compatibility of article 78 (g) of the Constitution with article 4, paragraph 2, of the Covenant. Members also suggested that the circumstances in which it was possible to proclaim a state of emergency should be more strictly defined since the existing constitutional provisions made it easy to resort to a state of emergency merely in response to labour unrest.

226. In his reply, the representative of the State party stated that the Ad Hoc Commission on Human Rights was a legislative commission established under rule 119 of the rules of procedure of the National Congress. As such, it was a multiparty body in which both the Government and the opposition were represented and it dealt with possible violations of human rights from the political standpoint. Its most important action to date had concerned the disappearance of two Colombian brothers, in the course of which it had demonstrated its usefulness and received much public support. It had also played an advisory role with respect to changes in the Civil Code, the Code of Criminal Procedure and the Code of Execution of Sentences.

227. Referring to remedies available for violations of constitutional freedoms, the representative explained that such cases could be brought before

a judge in the ordinary courts or before the Court of Constitutional Guarantees, which defended the rights and freedoms enshrined in the Constitution and whose members came from the executive, the judiciary and the private sector and were appointed by the National Congress. Failure by any official to implement a decision of the Court was punishable under the terms set out in the Penal Code. A considerable number of complaints against particular authorities or policies of the Government and of unfair dismissal for expression of opinions critical of the Government had indeed been brought before the Court. Although those procedures were extremely slow, there had been, in recent months, four convictions against members of the police for offences against constitutional freedoms. Under Order No. 8524A, an examination of all accusations of abuse of power or corruption made against the police in the past eight years had been initiated by the Ministry of the Interior. Furthermore, a high-level commission had been set up under Decree No. 2693 to draft a set of rules for the police as well as other legal instruments relating to their operation.

228. Concerning the views adopted by the Committee in the case of Mr. Bolaños, who had been unjustly charged with a crime and detained for many years without being sentenced, the representative noted that Mr. Bolaños had been released and that the Government had arranged employment for him. However, although the principle of compensation was enshrined in the Constitution, relevant legislation implementing that guarantee had not yet been developed for all infringements of human rights. In the case of Mr. Cañón García, a Colombian citizen, the Government recognized that the procedures under Ecuadorian law for the expulsion of aliens had not been complied with and the authorities had since then given specific instructions with regard to the expulsion of aliens to the INTERPOL section and to other police bodies.

229. Responding to other questions, the representative admitted that there were still instances of human rights violations in Ecuador. They had, however, to be regarded as arising from factors such as economic problems and inadequate social organization. Active efforts were being made to solve those problems, to continue to prosecute those violating human rights and to foster a proper attitude towards human rights. Members of the former Criminal Investigation Service who had been involved in cases of human rights violations had been dismissed from the police force and those who had not been implicated in any abuses had been reintegrated into police bodies that were not involved with criminal matters. A higher proportion of communications had been submitted to the Human Rights Committee than to the Inter-American Commission on Human Rights since the Committee had been in operation longer, was better known and was more effective in making Governments aware of human rights violations.

230. With regard to questions raised in connection with article 4 of the Covenant, the representative of the State party said that the reasons for declaring a state of emergency in Ecuador were consistent with the Covenant's provisions. The National Congress could revoke a state of emergency and the Court of Constitutional Guarantees could decide whether a declaration of state of emergency was valid. The latter had, for instance, declared that one such declaration made in May 1988 had not been justified. More recently, the Government had introduced a state of emergency in response to industrial action by petroleum workers which had entailed dramatic economic consequences for Ecuador. The strike had deprived the country of 60 per cent of its

foreign currency earnings and the workers had attempted to cut off the vital trans-Andean pipeline to press inordinate claims for compensation and for changes in the ownership of the petroleum industry. The President had suspended freedom of movement and the right of assembly within the petroleum installations as well as the constitutional guarantees relating to the right to work. The state of emergency had lasted barely two weeks and the Congress had been duly informed, in accordance with the Constitution, and had endorsed the measure. In future, the authorities would not fail to notify the Secretary-General whenever a state of emergency was declared, in accordance with article 4, paragraph 3, of the Covenant. The list given in article 48 (n) of the Constitution was identical, in spirit, with the provisions mentioned in article 4, paragraph 2, of the Covenant and the exercise of the fundamental human rights concerned had never been suspended.

Non-discrimination and equality of the sexes

231. In connection with that issue, members of the Committee wished to know, in the light of the Committee's general comment No. 18 (37), whether there had been any developments in relation to article 2, paragraph 1, and article 26 of the Covenant since the submission of the report. In addition, clarification was requested about the compatibility with the Covenant of the distinction made in article 9 of the Constitution between Spaniards and Ibero-Americans, on the one hand, and all other foreigners, on the other. Further information was requested regarding measures taken by the authorities to assist in the integration of indigenous populations into society and the prohibition against the signing of work contracts abroad by women.

232. In his reply, the representative of the State party pointed out that, under Ecuadorian law, racial discrimination was considered an offence and that amendments to the Civil Code, which sought to put an end to any form of legal discrimination between men and women, had been adopted in August 1989. Similarly, amendments to the Penal Code were currently being discussed in order to eliminate any shortcomings in that regard. The apparent distinction with respect to dual nationality in article 9 of the Constitution was based on historical considerations, since Spaniards and Ibero-Americans were the direct ancestors of the Ecuadorians. The rights of aliens, other than in the exercise of political rights, were not restricted as compared with those of citizens. The regulation which stipulated that companies wishing to hire a foreigner should give proof that his services were indispensable and that there were no Ecuadorians qualified to occupy the position was an administrative measure designed to protect the interests of Ecuadorians.

233. Referring to the rights of indigenous populations, the representative explained that for centuries the Indians had suffered considerable discrimination and savage exploitation at the hands of the Spanish conquerors, but also later at the hands of persons of mixed race. Although today they were no longer considered inferior beings as they had been during the colonial period, they were still poorer than other Ecuadorians. In the past, helping the Indians had meant helping them to climb the social ladder to the detriment of their identity. The recent trend, however, was to protect the cultural identity of the Indians. Some very primitive groups still existed in the country, and there was considerable debate as to whether they should be allowed to remain as they were or be integrated in the prevailing civilization. In view of the very strong arguments that such groups had the

right to their own lifestyle and culture and that the myriad of different cultures in Ecuador should be preserved, the groups concerned had so far remained undisturbed. The Government had taken positive measures to help the Indians, both in the field of education and in respect of agrarian reform. Furthermore, an extensive bilingual intercultural teaching programme had been set up and a national bilingual education department, headed by a representative of the indigenous populations, was now managing 1,500 schools. The Government had considerably extended the territory of the indigenous people of the Amazon region as well as those in the Andes. Development programmes for the general welfare of the poorest indigenous areas had also been implemented, with priority given to irrigation projects.

Right to life

234. Referring to that issue, members of the Committee wished to know what measures had been taken to investigate cases of disappearances and extrajudicial executions, to punish those found guilty, to compensate victims and to prevent the recurrence of those acts. They requested information on the mandate and composition of the high-level inter-agency commission mentioned in the report as well as on the rate of violent crimes in Ecuador and measures taken to prevent them. They also asked what measures had been taken to prevent the spread of cholera and other lethal diseases. In addition, information was requested regarding the legislation and practice in Ecuador in respect of abortion and on the number of women punished for having an abortion.

235. In his reply, the representative of the State party referred to certain cases of disappearances and extrajudicial executions that had been brought to the attention of the authorities and explained that, in the coastal agricultural areas, groups of landowners were waging a murderous war over land occupancy. All such cases had been investigated and the culprits, when found, brought to justice. With regard to the disappearances for which the police forces were responsible, the Government had taken general measures, such as the aforementioned abolition of the Criminal Investigation Service. It had also taken specific measures after the case of the Restrepo brothers, who had disappeared in 1988. In that particular case, the Government's concern had led it to set up on 13 July 1990 an international commission of inquiry to investigate the disappearance of the two children. In its report, the commission had concluded that the children had disappeared while in the hands of the police and that the senior police authorities had tried to hush up the case. It had therefore recommended that those guilty should be brought to justice, that action should be taken to prevent a recurrence of such incidents and that the family should be compensated. The Government had already taken steps in that direction, in particular by extending the mandate of the international commission, which had already received other complaints of disappearances and torture.

236. Turning to other questions, the representative said that abortion was considered a crime in Ecuador and that statistics were not available. Cholera had reached the country early in 1991 and the authorities and, in general, all sectors of the country, had combined their efforts to fight that scourge.

Treatment of prisoners and other detainees and liberty and security of the person

237. With regard to that issue, members of the Committee wished to receive information on the results of the campaign waged to make the armed forces and the police aware of the obligation to respect the human rights of persons under arrest or investigation; on recent allegations of torture and ill-treatment of persons arrested or detained on criminal charges; and on the nature of complaints received and any action taken thereon by the Court of Constitutional Guarantees in the period under review. They also asked how many persons, if any, had been tried and sentenced under the provisions of articles 187, 204, 205 and 206 of the Penal Code during the reporting period. With reference to persons having been held unlawfully because the time-limits laid down by law had expired, members of the Committee wished to receive information on the number of detainees involved, the length of their unlawful detention, and on the provisions that had been made for compensation. They also wished to receive additional information on a case of arbitrary or unlawful detention mentioned in the report.

238. In addition, in the light of a report by the International Labour Organisation (ILO) concerning the application of ILO Conventions in Ecuador, clarification was sought of the possibility for members of the armed forces to undertake activities within the framework of development programmes involving both military and civilian personnel. Information was also requested concerning legislative provisions that seemed to authorize incommunicado detention during the first 24 hours of detention and on regulations governing work by prisoners.

239. In his reply, the representative of the State party said that the campaign aimed at promoting human rights among the general public, and in particular the members of the armed forces and the police, had yielded very positive results. The Ecuadorian Human Rights Commission had taken an active part in that campaign and basic materials, such as a manual on human rights for use by police officers, had been published and widely disseminated. Furthermore, nearly two thirds of the prison guards had taken a course on how to respect the dignity of prisoners.

240. Concerning allegations of torture and ill-treatment, the representative emphasized that the authorities had duly examined all cases submitted to them, particularly those submitted by the Special Rapporteur of the Commission on Human Rights and by non-governmental organizations. The cases of 270 police officers who had allegedly tortured detainees had been referred to the competent authorities. A new department had also been set up under the Ministry of Justice and had made a study of the complaints of abuse of powers and corruption by members of the police force, which were expected to lead to administrative penalties.

241. With regard to remand in custody and detention pending trial, the representative pointed out that no one could be detained for more than 24 hours without being brought before a judge. There had, however, been countless cases of arbitrary and unduly prolonged detention. A new department had been set up within the framework of the Ministry of Justice in order to put an end to abuses in that area. Following the establishment of that department there had been a sharp decline in the number of persons detained

without charge. There were two main types of remedies to combat arbitrary detention: constitutional habeas corpus, which protected the fundamental rights of the individual, and judicial habeas corpus, which enabled a detainee to challenge the legality of his detention in a higher court. The reforms under way would make it possible to prevent arbitrary or illegal detention on the basis of an administrative decision or political considerations in the future and permit full respect for liberty and security of the person, as set forth in the Covenant.

242. Members of the armed forces were by no means subjected to forced labour, but, traditionally, the army had always cooperated in the economic and social development of the country. The Labour Code did not apply to them and they were governed solely by military laws. Labour was not compulsory in Ecuadorian prisons and the activities available to the detainees were extremely varied. Each individual was paid for his labour and received training in preparation for reintegration into society.

Right to a fair trial

243. In connection with that issue, members of the Committee wished to know what efforts had been made to abide by the principles embodied in article 14 of the Covenant and to put them into practice; what guarantees were available for defendants and their counsel; whether there was any special court in Ecuador and, if so, what role and jurisdiction it had; how the independence and impartiality of the judiciary were guaranteed; whether it was prohibited to compel a person to testify against himself; and whether there was a legal aid or advisory scheme in Ecuador and, if so, how it operated.

244. In his reply, the representative of the State party said that much still remained to be done in Ecuador to ensure the complete independence of the Court of Constitutional Guarantees, especially in cases of conflict between the executive and the National Congress, but a process to rectify that shortcoming had already started. Furthermore, a tradition of discrimination against the poor and indigenous populations still hampered the course of justice. A bill providing for the appointment of indigenous justices of the peace and justices with special responsibility for matters affecting inhabitants of the poor and disadvantaged urban areas was under consideration.

245. With regard to the rights of defendants, new regulations had been established according to which detainees were entitled to free legal consultations. Legal counsel could go directly to the prisons to consult with them and thus facilitate the settlement of cases. According to the Constitution, it was expressly forbidden to compel a person to testify against himself. The armed forces had special courts to deal with offences committed by the military in the exercise of their duties.

Freedom of movement and expulsion of aliens, freedom of religion and expression and freedom of assembly and association

246. Referring to those issues, members of the Committee wished to receive information on relevant provisions regarding applications for passports, costs incurred in obtaining a passport and possible grounds of refusal to issue a passport, including possibilities of appeal; on the remedies against an expulsion order; on the forms of worship considered as detrimental to public

morals; on the exceptions to freedom of expression based on constitutional and legal provisions relating to the state of emergency; on the restrictions, if any, currently applicable to associations in the interest of public order; and on current legal provisions governing the right to strike.

247. In addition, it was asked in which legal cases individuals were required, under article 19 (15) of the Constitution, to declare their religion or belief; whether restriction of the right to privacy under the National Security Act applied only in emergency situations or also in other situations; whether the Compulsory Military Service Act permitted conscientious objectors to perform alternative national service and, if so, what the latter's duration was compared with that of compulsory military service; how the freedom to seek, receive and impart information was implemented in practice; and whether government employees had the right to organize and to strike. Clarification was also requested as to the compatibility with article 22 of the Covenant and relevant ILO Conventions of several provisions of Ecuadorian law relating to the membership of the executive committee of a works council; the modalities for dissolution of a works council; the prohibition against trade unions taking part in religious or political activities; the penalty of imprisonment for the instigators of collective work stoppages; and to protection against acts of anti-union discrimination.

248. In his reply, the representative of the State party said that, although there were no political restrictions on the issue of passports, a person's exit from the country had to be restricted in some legal cases. The cost of a passport was equivalent to the average monthly wage and administrative appeal was available in the case of refusal to issue a passport. There was complete freedom of movement within the country. The Intendente General de Policía, who was a magistrate responsible to the Ministry of the Interior, was empowered to deport any alien who was in Ecuador illegally, and no appeal could be made against his decision. Expulsion orders against aliens legally in Ecuador had to be referred to the Minister of the Interior, whose decision was final. Requests for the extradition of aliens had to be decided upon by the President of the Supreme Court.

249. Concerning the exercise of freedom of religion and expression, the representative explained that, according to article 19 (6) of the Constitution all persons could freely practise the faith that they preferred, except for the limitations prescribed by law to protect the security, public morality and fundamental rights of other persons. Among the many sects that had arisen in Latin America in recent years there were some that were not only dangerous to public morals but even to life. The Penal Code provided for the punishment of any illegal acts of that type. The President of the Republic was empowered to impose censorship on the media during a state of emergency; that measure had, however, never been applied under the present Constitution. There was currently no provision for conscientious objection in Ecuador. In actual fact, as Ecuador's armed forces were small, they did not require all the potential conscripts and it was relatively easy to avoid performing military service. However, most of the poorer elements of the population eagerly performed their military service as it provided them with an opportunity to escape poverty and rural isolation. The issue of freedom of access to information was now the subject of considerable attention in Ecuador. Administrative files were public, with the exception of those relating to national security and military matters. However, access to administrative files was hampered by the bureaucratic tendency towards secrecy.

250. There were no restrictions on freedom of assembly, but the suspension of enforcement of constitutional guarantees was permitted during a state of emergency. There had been no cases of such suspension apart from restriction of the right to meet in certain specific places, such as in the vicinity of oil refineries or in areas of strategic importance. The right to strike was guaranteed under the Constitution and set forth in the Labour Code. That right was fully respected by the Government subject to the necessary security arrangements. Although the Ecuadorian Government had received in the past requests to improve its legislation, there was currently no complaint against Ecuador by the ILO Committee of Experts on the Application of Conventions and Recommendations. It was considered that a strong organization of the labour force was absolutely essential to a democratic way of life and, therefore, all forms of trade-union freedom were supported. A proposal to reform the Labour Code was currently under consideration by the Congress and most of the proposed reforms were supported by the trade unions. The remaining changes, which were necessary in the current economic situation, did not restrict labour freedoms. Members of the civil service possessed the right of association, although they could not organize strikes, and there were a multitude of civil service unions.

Protection of children

251. Referring to persistent reports that children in Ecuador had been kidnapped for sale or adoption, members of the Committee wished to know what provisions had been adopted to protect children from such practices and to prosecute persons who had committed such offences. In addition, it was asked what were the legal status, citizenship rights and inheritance rights of children born out of wedlock. Further information was also sought on the right of married women to initiate legal proceedings.

252. In his reply, the representative of the State party confirmed that there had indeed been cases in which children had been kidnapped for adoption. A number of individuals, including lawyers who had acted as intermediaries, had been convicted and sentenced to prison. The incidents had caused a national outcry and the regulations on adoption had been suspended on account of the loopholes they offered to unscrupulous individuals. Furthermore, on 11 January 1990, new adoption regulations, designed principally to promote the interests of adopted children, had come into force. Since the reform of the Civil Code in 1970, there had been no distinction whatsoever between children born in or out of wedlock, provided that a legal declaration of paternity or maternity was made. As a result of the 1988-1989 reforms, both spouses were equal before the law and married women were no longer subject to the tutelage of their husbands. Women were now also free to enter into contracts and to appear in court.

Right to participate in the conduct of public affairs

253. With regard to that issue, members of the Committee inquired what progress had been achieved in the preparation of a draft amendment to the Political Parties Act to bring its provisions more into line with the concept of "electoral quotient" referred to in the Constitution; what were the consequences of the deprivation of civil rights; and whether the provisions of Ecuadorian law, which made voting compulsory except for those who were illiterate or aged over 65, were compatible with the Covenant.

254. In addition, they wished to know why members of the police and the armed forces did not have the right to vote; what legal sanctions, if any, were applicable to persons who were unwilling to perform their duty to vote; whether the stipulation that a party had to be a nationwide organization before it could be registered was fully in conformity with article 25 of the Covenant; why only the President had the power to call a referendum; and whether it was intended to repeal article 13 (2) of the Constitution, which provided that the rights of citizenship were suspended during confinement in prison.

255. In his reply, the representative of the State party said that the "electoral quotient" requirement, whereby a party that did not obtain at least 5 per cent of the vote cast in two successive elections at the national level was automatically dissolved, had been abrogated. Deprivation of civil rights included the right to vote and to stand for election, and applied to all persons who had received final prison sentences. There was no contradiction between the Covenant and those provisions of Ecuadorian law that made voting compulsory except for those who were illiterate or aged over 65 as there was no question of depriving any category of persons of the right to vote. There were historical reasons for according optional suffrage to illiterate persons. Illiterate persons came from the indigenous Indian population and liberal elements in the society had opposed giving indigenous peoples voting rights based on the assumption that they were too easily manipulated by the large landowners and the Church. It was therefore considered that making voting optional for illiterate persons would reduce such manipulation. However, since the number of persons who could not read or write was decreasing, the impact of such a measure on the political life of the country was diminishing. Mandatory voting was of great importance in a fragile democracy and was a means of ensuring the legitimacy of the Government.

256. The right to vote had not been granted to members of the police and the armed forces for historical and political reasons. Civilian society had indeed sought, by withholding the right to vote, to restrain the army's political ambitions. In recent years, however, the armed forces had tended increasingly to respect the electoral order and one school of thought was in favour of granting them the right to vote. The stipulation that a party had to be a nationwide organization before it could be registered was also to be understood in its historical context. Ecuador was divided by the Andes, a barrier which had created wide geographical differences and an intense regionalism. In the past, that situation had been exploited by political parties anxious to maintain regional powers and oligarchy. As a result, political parties now had to be national in scope, and under the Political Parties Act a large proportion of Ecuador's 21 provinces had to provide candidates for election. There were, however, no major restrictions on the formation of parties, and there were currently 17 political parties in Ecuador.

Rights of persons belonging to minorities

257. With reference to that issue, members of the Committee wished to receive information on how the ecological deterioration of the area in the Amazon region was affecting the social and cultural organization of the indigenous communities living there and on any measures that had been taken to address that problem. In addition, information was requested on treaties or

agreements, if any, between Ecuador and its indigenous populations and on the representation of minorities in the elected bodies of Ecuador.

258. In his reply, the representative of the State party stated that the Shuaros made up about half the indigenous population living in the Amazon region, the rest comprising a further 13 ethnic groups. The ecological deterioration of the region was due, in particular, to the deforestation attendant on the spontaneous settlement that had taken place after roads had been built through the area; oil production; and the granting of agricultural concessions to plant crops such as the oil palm. In an attempt to curb spontaneous settlement, the Government had amended the agrarian reform measures that had conferred ownership of land on those clearing it of trees. The Institute for Agrarian Settlement was also promoting more rational use of lands in the Amazon region. The indigenous peoples had a very important role to play in the protection of the area and, therefore, over 1 million hectares had been granted to them. The Government had also set up new stringent standards for oil companies working in the Amazon region and a bill had been drawn up to establish a fund for conservation of the ecology of the Amazon region. However, enormous problems still remained to be addressed and continuous vigilance was necessary. Ecuador hoped to be as successful in protecting the Amazon region as it had been in conserving the ecologically fragile area of the Galápagos region.

259. Replying to other questions, the representative said that indigenous peoples had always been considered as Ecuadorians and, therefore, Ecuador had not signed any treaty or agreement with them. Electoral minorities participated in Government according to a quota system based on the size of their vote in an election.

Concluding observations by individual members

260. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the third periodic report of Ecuador and for having engaged in a fruitful and constructive dialogue with the Committee. The delegation had given comprehensive and frank replies and the report itself made no secret of the human rights violations committed, in particular, by some branches of the police. It was clear that the Government was very concerned to improve the human rights situation and had the necessary political will to eliminate the last vestiges of human rights violations. Positive developments noted by the Committee included Ecuador's accession to a large number of regional and international human rights instruments; the human rights training being dispensed to members of the police and armed forces; the abolition of the Criminal Investigation Service; the restructuring of the police; and the creation of an Office of Director-General for Human Rights within the Ministry of Foreign Affairs.

261. At the same time, members of the Committee were of the view that every effort should continue to be made to prevent and eliminate once and for all cases of ill-treatment, to elucidate all the cases of disappearances that had occurred in the past, and to punish those responsible. Among the concerns expressed by members that had not been fully allayed were those relating to conditions for declaring a state of emergency and making the declaration provided for in article 4, paragraph 3, of the Covenant; compulsory labour in the context of military service; the independence of the judiciary, especially

arrangements for appointing members of the Supreme Court and the powers of the Court of Constitutional Guarantees; the prohibition against women signing contracts to work abroad; and the denial of the right to vote to members of the police and the armed forces. It was also felt that legislative provisions should be adopted providing for compensation to victims of torture or arbitrary arrest or detention. Lastly, the hope was expressed that more forceful measures would be taken on behalf of the indigenous population.

262. The representative of the State party thanked the members of the Committee for the dialogue they had carried on with the Ecuadorian delegation. It was a fact that Ecuador not only faced problems of very long standing but also an extremely difficult economic situation. No progress in solving those problems would have any meaning, however, if the rights and dignity of the individual were not respected.

263. In concluding the consideration of the third periodic report of Ecuador, the Chairman thanked the delegation for submitting a candid report that showed, without covering up cases of torture, disappearances and ill-treatment that still existed in the country, that the Government was concerned to make progress in promoting human rights.

ALGERIA

264. The Committee considered the initial report of Algeria (CCPR/C/62/Add.1) at its 1125th, 1128th and 1129th meetings, held on 25 and 27 March 1992 (CCPR/C/SR.1125, SR.1128 and SR.1129). (For the composition of the delegation, see annex VIII.)

265. The report was introduced by the representative of the State party who explained that, following the adoption of the Constitution on 23 February 1989, a process of wide-ranging reform had been launched aiming at establishing democratic institutions based on a multiparty system, freedom of the press, the separation of powers and an independent judiciary. Those structural reforms had been given expression at the international level through the country's accession to the principal international human rights instruments. Since the submission of the report, the protection of human rights had been strengthened by the creation of a national human rights monitoring body. However, the disparity between the rapid progress of legislation and the actual situation in the country had led to a crisis and the authorities had been obliged recently to take steps to restore the authority of the State.

266. Members of the Committee welcomed Algeria's accession to the Covenant and expressed satisfaction with the opportunity to engage in a dialogue with the Government of Algeria. Noting that the report had been prepared in April 1991 and therefore did not cover recent events, they stressed the need for more information about developments during the period subsequent to the report's issuance, particularly events relating to both the state of emergency declared in June 1991 and the current state of emergency.

267. With regard to the constitutional and legal framework within which the Covenant was implemented, members of the Committee wished to receive further information on the status of the Covenant in domestic law, in particular in

the light of the decision made by the Constitutional Council giving the Covenant precedence over national legislation. Noting that the Constitution had been drafted shortly before Algeria's accession to the Covenant, but that the Covenant had not been taken as a model, members wished to know the status of chapter 4 of the new Constitution, which dealt with citizens' rights and liberties, and how that chapter related to the relevant provisions of the Covenant. Observing that the provisions of the Covenant formed an integral part of Algerian law and could be directly invoked before the courts, they also wished to know what remedies were available in cases where a violation of the Covenant did not constitute an infraction under Algerian law. Additionally, it was asked what measures had been taken to promote knowledge of the Covenant and its provisions and whether any publicity campaigns or educational programmes had been undertaken.

268. Concerning recent political developments, members wished to receive necessary additional information on the suspension of the democratic process and the cancellation of the second round of legislative elections, which had occurred at the beginning of 1992, and wished to know how the recent attempt of anti-democratic forces to use the democratic process to come to power was viewed by the Algerian authorities in the context of article 5 of the Covenant. With regard to article 4 of the Covenant, members wished to receive additional information on both the first state of emergency declared on 4 June 1991 and the more recent one declared in February 1992. In that connection, they inquired whether the Government had made use of the notification procedure laid down in article 4, paragraph 3, of the Covenant. Members also asked what rights had been derogated from during both states of emergency and what was the constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant. Further information was also sought on any factors and difficulties, other than the states of emergency, that affected the implementation of the Covenant.

269. Regarding the prohibition of discrimination on various grounds, clarification was requested as to the compatibility with the Covenant of article 28 of the Constitution, of the requirement of a dowry when contracting marriage and of the right of a husband to take more than one wife. In that connection, members wondered how the prohibition of discrimination against women could be reconciled with Algeria's traditional values and patriarchal culture. Regarding the status of aliens in Algeria, it was asked in which respects the rights of aliens were restricted as compared with those of citizens and whether aliens who married Algerian citizens could pass on their nationality to their children.

270. In connection with article 6 of the Covenant, members of the Committee requested clarification as to the offences that were currently punishable by the death penalty; the number of executions that had taken place over the past year; on the recourse available against a death sentence, including cases where a sentence had been passed by a military tribunal; and the procedure for granting pardon under the current state of emergency. In the light of the provision of article 6 of the Covenant requiring States parties that had not abolished the death penalty to reserve it for the most serious crimes, members asked why the imposition of the death penalty for economic offences was allowed. It was also asked what the rules and regulations were governing the use of force by the police and security forces during peaceful demonstrations; whether there had been any violations of those rules and regulations and, if

so, what measures had been taken to prevent their recurrence; and what progress had been made in reducing infant mortality.

271. With reference to articles 7, 9, 10 and 11 of the Covenant, members of the Committee wished to know what measures had been taken to ensure respect for article 7 of the Covenant, particularly during the states of emergency; what measures had been taken to punish individuals responsible for acts of torture or cruel, inhuman or degrading treatment or punishment and to prevent the recurrence of such acts; whether there were any difficulties in carrying out medical examinations of detained persons, particularly during states of emergency; how soon after arrest a person's family was informed and how quickly such person could contact a lawyer; what the normal time-limit for custody was; what the reasons were for placing people under administrative detention in internment camps; and what were the conditions of detention and the current number of detainees in such camps. Clarification was also requested of the compatibility with article 11 of the Covenant of the provision of the domestic law referred to in the report that provided for criminal prosecution on the grounds of fraud or misrepresentation.

272. Regarding article 14 of the Covenant, members of the Committee wished to receive further information on the guarantees for the full independence and impartiality of the judiciary, in particular in such matters as the right to retire, the independence of the body responsible for appointments, and the protection of judges from criminal and civil process and against any form of pressure; on the composition and functions of the Constitutional Council and the High Council of the Judiciary; and on the status, composition and procedures of military tribunals. In that regard, it was asked how the practice of having military courts deal with offences committed by civilians could be reconciled with the provisions of the Covenant. It was also asked why the High Council of the Judiciary was headed by the President of the Republic; whether the six-year term accorded to the President of the Constitutional Council was sufficient to guarantee his independence; why judges become irremovable only after 10 years of effective service; and whether free legal aid was available to persons facing sentences of less than five years of imprisonment.

273. In connection with articles 17, 18 and 19 of the Covenant, additional information was requested on restrictions on freedom of opinion and expression and freedom of the press, particularly during the states of emergency. Clarification was also requested of article 77 of the Information Act, which prescribed penalties and imprisonment for criticism of Islam; of the privileges enjoyed by Islam, which was the State religion, as compared with other religions, including newer religions; and of any problems encountered regarding the relationship between Islam and human rights.

274. With regard to articles 21 and 22 of the Covenant, members of the Committee wished to know whether the National People's Assembly had been allowed to meet during the states of emergency declared in June 1991 and February 1992 and whether any restrictions had been placed on freedom of association, the right to strike and the right to hold public meetings during those states of emergency.

275. With reference to article 25 of the Covenant, members of the Committee wished to receive additional information on the general legal framework and

the constitutional process that had made possible the resignation of the President of the Republic and the recent suspension of elections and they also wanted more information on the legal requirements for the registration of political parties and the grounds on which requests for registration could be rejected. They also requested clarification of the legal basis for dissolving certain political parties, such as the Islamic Salvation Front, and other associations during the current emergency. They asked whether that action could be reconciled with article 25 of the Covenant and whether the Constitutional Council had ever examined the constitutionality of the electoral law.

276. Regarding article 27 of the Covenant, members of the Committee wished to receive additional information on the situation of ethnic, religious or linguistic minorities in Algeria and requested clarification of the statement in the report that the Algerian people was characterized by homogeneity. In that regard, further information was sought on the Berbers and on any measures taken to foster and preserve their culture and language.

277. In his reply, the representative of the State party explained that a state of siege had been declared on 4 June 1991 for a period of four months following civil disturbances that had lasted for more than a week, and which had created a situation of public danger posing a threat to the operation of the Government. As a result of the disturbances, 55 deaths had been reported, including members of the police and the armed forces. In accordance with article 4 of the Covenant, the Secretary-General had been notified of the Government's action on 19 June 1991. The state of siege had been lifted on 29 September 1991, before the end of the four-month period. The legal basis for the declaration of the state of siege was article 86 of the Constitution. The state of siege had entailed derogations from article 9, paragraph 3; article 12, paragraph 1; article 17; article 19, paragraph 2; and article 21 of the Covenant. All constitutional provisions as well as articles 4 and 5 of the Covenant had been respected. Five detention centres had been established and a total of 1,000 people had been held in those centres. All detainees had been released when the state of siege was lifted, except those convicted of criminal offences.

278. A state of emergency had again been declared on 9 February 1992 for a duration of 12 months. As a result of the events that had led to the declaration of the state of emergency, 99 deaths had been reported as of 19 March 1992, including 23 deaths among members of the police and the armed forces. The state of emergency could be lifted before the end of that period if the situation stabilized. The Secretary-General had been notified on 13 February 1992 of derogations from article 9, paragraph 3; article 12, paragraph 1; article 17 and article 21 of the Covenant. Six security centres had been established, where a total of 8,800 detainees were being held. So far, 2,500 of the detainees had been tried and 1,420 convicted. Guidelines concerning respect for human rights had been issued to the personnel of the centres. Although medical controls were lacking at the places of detention, the situation was improving and would be helped further by the imminent release of many internees. Family visits had been allowed and a number of humanitarian organizations had visited the centres.

279. Turning to the electoral process, the representative of the State party explained that the dissolution of the National People's Assembly and the

resignation of the President had created a situation not anticipated by the Constitution. Consultations among the President of the Constitutional Council, the Head of the Supreme Court, the Army and the High Council of Security had been held regarding ways to provide continuity and the normal functioning of the State. They had reached the decision that it was impossible to continue the electoral process, that public security had to be protected and that the High Council of Security would assume and retain the executive power until the constitutional crisis had passed.

280. Referring to questions relating to the status of the Covenant, the representative of the State party explained that the Constitution had been promulgated prior to the ratification of the Covenant; accordingly, the constitutional provisions had not been based exactly on the corresponding provisions of the Covenant. While, in principle, the Covenant took precedence over domestic legislation, the courts had not yet ruled on the matter. A range of institutions, including law faculties, police academies and training institutes for staff serving in penitentiaries, participated in efforts to make the provisions of the Covenant known to the public.

281. With regard to questions relating to equality and non-discrimination, the representative of the State party said that measures had been taken to provide women access to education and vocational training so as to equip them to enter the workforce. Once a woman reached the age of majority she had complete control over her own money irrespective of her marital status. Polygamy, which was discouraged by the Koran and severely restricted by the Algerian Family Code, appeared to be dying out. The child of an Algerian mother and a foreign father was given an opportunity to reject Algerian citizenship one year before attaining majority.

282. With reference to article 6 of the Covenant, the representative said that consideration was being given to the possibility of abolishing the death penalty. At present, the death penalty could be imposed for murder, for certain crimes against national security, such as treason or espionage, and for sabotage against the national economy. However, no death sentence for economic offences had been carried out in over 30 years and the usual procedure was commutation to imprisonment. A death sentence could be appealed to the Supreme Court, through an application for judicial review of the facts, and an appeal could be made for a presidential pardon. In the past five years, five sentences of death had been imposed, all for murder. Although guidelines on the use of firearms by the police had been issued, abuses had been noted and investigations were being carried out.

283. Regarding articles 7, 9, 10 and 11 of the Covenant, the representative emphasized that torture and other cruel, inhuman or degrading treatment or punishment were prohibited by the criminal law and that perpetrators had been brought to justice. A number of the investigations of reported incidents involving the police forces were currently under way. Members of certain political parties had not been detained because of their political opinion but rather for violations of the Associations Act, which prohibited the promotion of fanaticism or incitement to violence. Under normal circumstances, individuals could be held in police custody without charge for 24 hours. For offences against national security, that period was doubled. Imprisonment for debt *per se* did not exist in Algeria, but if a debtor failed to comply with court orders the possibility of imprisonment might arise. Given the very

stringent conditions laid down in the Code of Civil Procedure, there had never been any instance of imprisonment for debt in Algeria.

284. Referring to questions relating to article 14 of the Covenant, the representative of the State party explained that military tribunals were composed of two military magistrates and a civilian magistrate, who presided. In normal times, such tribunals had jurisdiction only for military offences or criminal offences occurring within military establishments. During states of emergency, however, their competence had been extended to violations of state security. Military tribunals followed the normal procedure for investigation and trial and their decision could be appealed. The requirement that judges have 10 years of service in order to attain permanent tenure had been introduced only recently and the decisions of lower court judges were reviewed by those at higher levels, who had permanent tenure. The careers of judges were supervised by their peers and disciplinary actions were taken by the High Council of the Judiciary, which consisted of 25 members. That institution was chaired by the President of the Republic because his presence, as the guardian of the Constitution, was felt to be symbolic. The Constitutional Council consisted of seven members, of whom two were appointed by the President of the Republic, two were elected by the National People's Assembly and two were elected by the Supreme Court. The President of the Constitutional Council was appointed by the President of the Republic for a single 10-year term. Experience would show whether that arrangement reduced the independence of the Council.

285. In response to questions relating to articles 17, 18 and 19 of the Covenant, the representative said that the prohibition of offences against the State or against Islam or other religions was in conformity with article 19, paragraph 3, of the Covenant, which stipulated that the exercise of the right to freedom of expression carried with it special duties and responsibilities and could be subject to certain restrictions provided by law. Verification of the accuracy of publications could take place only through legal channels, either in the case of persons claiming defamation or in the case of allegedly false information affecting the security of the State. The status of Islam as the State religion was not incompatible with freedom of conscience because the Algerian State was a Republic that did not impose Islam on its people; other religious communities existed and were provided subsidies and assistance.

286. With regard to articles 21, 22 and 25 of the Covenant, the representative said that a political party had been dissolved on the basis of the Associations Act, which prohibited incitement to violence. That dissolution was currently being appealed before the Supreme Court. Restrictions on the right to form trade unions in the interests of national security were in conformity with article 22 of the Covenant.

287. In connection with article 27 of the Covenant, the representative of the State party emphasized that Berber culture was considered to be an integral part of the Algerian identity and that Berber-speaking persons were not viewed as constituting an ethnic or linguistic minority. Efforts were being made to promote the Berber language through the national media, education and the development of a writing system.

Concluding observations by members

288. Members of the Committee thanked the representative of the State party for his cooperation in presenting the report and for having engaged in a discussion that had been particularly constructive. The delegation had endeavoured to answer members' questions candidly without trying to conceal the difficulties. The report, which had been submitted within the specified period, contained detailed information on the laws and regulations relating to the implementation of the Covenant. However, it contained only scant information about the implementation of the Covenant in practice and about factors and difficulties impeding the application of the Covenant.

289. Members noted with satisfaction that Algeria had ratified or acceded to a number of international human rights instruments and had included in its Constitution various provisions relating to human rights and that a national human rights-monitoring body had been established. Members nevertheless considered that their concerns had not been fully allayed, especially with regard to the suspension of the democratic process and the blocking of democratic mechanisms. Members expressed concerns especially as to the high number of arrests and the abusive use of firearms by members of the police in order to disperse demonstrations; respect for due process of law, particularly before military tribunals; real possibilities for implementing the right to a fair trial; the large number of reported cases of torture and ill-treatment; the restrictions on rights to freedom of opinion and expression, and freedom of the press; the many cases of discrimination against women; and the non-recognition of minorities, especially the Berbers. Members also considered that, in the light of the provision of article 6 requiring States parties that had not abolished the death penalty to reserve it for the most serious crimes, it was contrary to the Covenant to impose the death penalty for crimes that were of an economic nature.

290. The representative of the State party said that the dialogue with the Committee had been very profitable and that the Committee's observations on his country's initial report would serve to improve Algeria's human rights activities. Algeria was anxious to lift the state of emergency as soon as possible and to return to normal political conditions. Democracy was not under threat but, in order to save it, it had been necessary to halt the electoral process temporarily, as all participants in the democratic process had to be respectful of that process.

291. In concluding the consideration of the initial report of Algeria, the Chairman said that the dialogue between the representative of Algeria and the Committee had been extremely useful and had demonstrated how much progress had been made in Algerian legislation. He expressed the hope that the state of emergency, which had been declared for one year, would be lifted sooner than planned.

Comments of the Committee

292. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

293. In accordance with that decision, at its 1147th meeting, held on 9 April 1992, the Committee adopted the following comments.

Introduction

294. The Committee notes that the dialogue with the Algerian delegation was particularly constructive, because the delegation endeavoured to answer members' questions candidly without trying to conceal the difficulties. It thanks the State party through the latter's representative for its good report, which was submitted within the specified period. The report contains detailed information on the laws and regulations relating to the application of the provisions of the Covenant. The Committee regrets, however, that the report includes little information concerning the actual application of human rights standards. It also regrets the failure of the report to indicate the factors and difficulties that are impeding the application of those standards. Lastly, it notes with regret that the report, having been submitted on 5 April 1991, could make no reference to the states of emergency, notification of which reached the Secretary-General on 19 June and 13 February 1992, respectively.

1. Positive aspects

295. The Committee notes with satisfaction that Algeria has ratified or acceded to a number of international human rights instruments, in particular the Covenant and the first Optional Protocol thereto, and has made the declaration provided for in article 41 of the Covenant. In addition, Algeria has included in its Constitution various provisions relating to human rights and has amended a number of legislative texts in order to reflect international human rights standards. The Committee also notes with satisfaction the establishment of a Ministry of Human Rights, later replaced by a national human rights monitoring body.

2. Factors and difficulties impeding the application of the Covenant

296. The Committee notes that at the time of the submission of the report, Algeria was in a process of transition to democracy. Since that time, Algeria has been faced with substantial difficulties that have brought this process to a standstill. The Algerian authorities, therefore, considered such ways and means as seemed appropriate to them to prevent forces that they considered hostile to democracy from taking advantage of democratic procedure in order to harm democracy. Among the measures adopted in this respect are the proclamation of the two states of emergency and the interruption of the electoral process.

3. Principal subjects of concern

297. The Committee expresses its concern regarding the suspension of the democratic process and, in general, regarding the blocking of democratic mechanisms. It is concerned about the high number of arrests (8,800) and the

abusive use of firearms by members of the police in order to disperse demonstrations. The Committee expresses doubts about respect for due process, especially before military tribunals, about the real possibilities for implementing the right to a fair trial, about the numerous cases of torture and ill-treatment that have been brought to its attention and about the restrictions on rights to freedom of opinion and expression and freedom of the press. The Committee further considers that, in the light of the provision of article 6 requiring States parties that have not abolished the death penalty to reserve it for the most serious crimes, it is contrary to the Covenant to impose the death penalty for crimes that are of an economic nature.

298. The Committee also regrets the many cases of discrimination against women and the non-recognition of minorities, especially the Berbers.

4. Suggestions and recommendations

299. The Committee recommends that Algeria put an end as promptly as possible to the exceptional situation that prevails within its borders and allow all the democratic mechanisms to resume their functioning under fair and free conditions. It draws the attention of the State party to the fact that the Covenant does not permit derogation from certain rights even in times of emergency and that, therefore, any excesses relating to, inter alia, the right to life, torture and the right to freedom of conscience and expression are violations of the Covenant, which should not be allowed to continue. The Committee hopes that the State party will make an evaluation of the application of the provisions of the Covenant after the report was written and would like to be kept informed of any changes in the situation and of all future developments.

PERU

300. The Committee began the consideration of the second periodic report of Peru (CCPR/C/51/Add.4) at its 1133rd to 1136th meetings (forty-fourth session), held from 31 March to 2 April 1992 (CCPR/C/SR.1133-1136). The Committee decided, at the request of the Government of Peru, not to conclude the consideration of that report until its forty-fifth session and to take into account the additional information offered by the State party that was to be supplied in response to the unanswered queries and concerns of Committee members. Subsequently, after it had become aware of the events that had occurred in Peru on 5 April 1992, the Committee decided, at its 1148th meeting held on 10 April 1992, to request that a supplementary report dealing with those events, particularly in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant, should also be submitted to it for consideration (together with the additional information) at its forty-fifth session. After noting the additional information provided by the Government of Peru (CCPR/C/51/Add.5) and after considering the supplementary report on the effects of the events occurring after 5 April 1992 (CCPR/C/51/Add.6) at its 1158th to 1160th meetings, held on 20 and 21 July 1992 (CCPR/C/SR.1158-1160), the Committee concluded its consideration of the second periodic report of Peru. (For the composition of the delegation, see annex VIII.)

301. The report was introduced by the representative of the State party, who said that the current dynamics of terrorist violence in Peru had prevented the Government from giving full legal scope to the promotion and observance of civil and political rights. As an illustration of the troubled situation in Peru, the representative explained that the Public Prosecutor for Terrorism, who was the person originally designated to present the report to the Committee, was not able to come owing to death threats from the Shining Path (*Sendero Luminoso*) terrorist group. In such difficult circumstances, the Peruvian Government had nevertheless developed a comprehensive human rights strategy that had led to the issuance of new legislative decrees and the adoption of other provisions to deal with human rights problems involving civil and political rights. Those new measures included the promulgation of the new Penal Code, the establishment of the Council for Peace, the delegation of authority to government inspectors during states of emergency, enhancement of the powers of political authorities in zones of states of emergency where the armed forces had assumed control, the setting up of a register of detained persons and the implementation of a national plan for publicizing and teaching the Constitution of Peru and human rights instruments.

Constitutional and legal framework within which the Covenant is implemented, in particular during the state of emergency

302. With respect to that issue, members wished to receive information or clarification concerning measures to bring Peruvian legislation in line with the Covenant; the remedies of habeas corpus or *amparo*; the functions and operation of the legal system; the rights derogated from during the successive states of emergency and the resulting impact on the exercise of the rights guaranteed under the Covenant; effective remedies for violation of human rights during a state of emergency; the respective powers of the Government as well as other constitutional bodies and the armed forces during a state of emergency; the impact of subversive and drug-trafficking activities; and the Government's efforts to comply with the provisions of the Covenant and to promote public awareness of human rights instruments. Members also wished to be advised of the follow-up action taken as a result of the views adopted by the Committee with regard to Peru in communications Nos. 202/1986 and 203/1986.

303. In addition, members wished to know which practical measures had been implemented to ensure the effective enjoyment of human rights, in particular during a state of emergency; how the declaration of localized or short-term states of emergency could be reconciled with the Covenant; why article 2 (2) of the Peruvian Constitution, guaranteeing equality without discrimination, did not include all the categories listed in article 2 of the Covenant; what were the "expeditious actions" that had been taken to suppress terrorism; whether the reported 5,000 disappearances could be attributed to the "excesses" of a few members of the military; what were the lowest courts before which actions of habeas corpus or *amparo* could be brought; what the proposed preventive action of habeas corpus would consist of; how the reported massacre by the armed forces in Callara could be justified by the so-called principle of collective responsibility; and how the independence of the judicial system could be guaranteed, in practice, by the Public Prosecutor's Office. Members wished to know further whether the National Council for Human Rights was also responsible for preparing reports for submission to international organizations; whether the texts of treaties relating to human

rights, which had constitutional priority, were reflected in Peruvian legislation; whether individuals could directly invoke the provisions of the Covenant; whether the Government had inquired into alleged cases of intimidation from both terrorist groups and government agencies; whether those responsible for excesses had been found guilty and punished; what measures had been taken to overcome the problems referred to in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20); whether a private citizen could institute proceedings to declare a law unconstitutional; and what difficulties had been encountered by the judiciary when trying offences committed by the armed forces.

304. In his response to the questions raised by members of the Committee, the representative of the State party said that the Peruvian Constitution contained specific provisions that reflected the Covenant, and the Government had also been amending national legislation to conform with the Covenant. Article 101 of the Constitution stipulated that international treaties formed part of Peruvian law and prevailed over conflicting national provisions. The Court of Constitutional Guarantees, having the competence to declare the unconstitutionality of laws and decrees, was the highest body qualified to deal with habeas corpus and amparo.

305. In connection with the questions relating to states of emergency, the representative explained that the rights to personal freedom, the security and inviolability of the home and freedom of assembly and of movement within the national territory could only be suspended but not derogated from upon the declaration of a state of emergency. The remedies of habeas corpus and amparo, as well as the remedy of preventive habeas corpus, remained available to persons who believed that their rights would be restricted. The situation would be improved by a new bill designed to overcome shortcomings in national legislation and to ensure full enjoyment of the right to habeas corpus.

306. Concerning other questions raised by members of the Committee, the representative said that it was the Government's policy to take measures to punish groups engaged in terrorism or drug trafficking. In a Memorandum of Understanding signed in 1991 between Peru and the United States of America to combat illicit drug trafficking, specific provisions were included to ensure that human rights would be respected when carrying out the anti-drug strategy. Teaching the provisions of the Covenant and other international human rights instruments had been made obligatory in educational institutions, both military and civilian, at all levels. The authorities in Peru had been making efforts to defend human rights and were considering ways to follow up on United Nations documents and to improve observance of the provisions of the Covenant.

307. The representative of the State party stressed that one of the main obstacles to the full implementation of the rule of law and of human rights in Peru was the continued activities of terrorist groups, such as the Shining Path, which could not be described as insurgents because they sought to establish totalitarianism and anti-democratic regimes and showed no respect for human rights. The Peruvian Government did not have a policy to deal with systematic violations of human rights. While mistakes could be and had been made, respect for human life was the cornerstone of Peru's democratic system and developing economy. With regard to the excesses committed by the armed forces and national police during the states of emergency from August 1989 to

July 1991, 37 members of the army had been punished and 2 cases involving members of the navy were being investigated. Difficulties encountered in implementing rights under the Covenant also included logistic and procedural problems, such as the lack of infrastructure and difficulties stemming from the low salaries of the judicial officers. It was sometimes necessary to establish military-political commands to restore order in areas where the civilian authorities had either been assassinated or threatened by terrorist groups. However, the Government and the President had overall responsibility for maintaining law and order. A new law empowering the armed forces to take control of internal order and establish military-political commands in emergency zones gave the political authorities full rights in such zones and reaffirmed the authority of regional governments as part of an anti-terrorist strategy designed to strengthen the State's authority. Prosecutors were authorized to visit police stations, military installations and other detention centres to monitor the situation of detainees and investigate alleged disappearances. A state of siege applied to the entire country and could be put into effect in the event of, or the imminence of, invasion, foreign war or civil war.

308. The authority to legislate could be delegated to the executive under article 188 of the Constitution. The President was required to report to Congress on legislative decrees issued in exercise of such delegated powers. The National Council of the Magistracy was responsible for proposing to the President the appointment of judges and the Supreme Court investigated the functioning of the judiciary. Disappearances had fallen from 231 in 1990 to 117 in 1991. Cases of alleged torture had also fallen from 22 in 1990 to 7 in 1991. On the other hand, the number of disappearances where the Government of Peru had cooperated by providing specific answers had increased. The constitutionality of a law could be challenged by the President, 60 deputies or 20 senators, or by a petition of 50,000 citizens.

Right to life; recognition as a person before the law; liberty and security of the person; prohibition of slavery and servitude; treatment of prisoners and other detainees

309. In connection with those issues, members wished to know what measures had been taken to investigate, and to prevent the occurrence of, disappearances, extrajudicial executions or torture; what the rules were governing the use and abuse of firearms by the police and security forces; the rate of infant mortality as well as the legality of abortion; whether confessions obtained under torture could be used in court proceedings; what kind of restrictions could be placed on an individual's liberty; how quickly a person's family was informed of his arrest; what the policy was on decriminalizing prison inmates; what arrangements had been made for supervising detention centres; and what the procedures were for submitting and investigating complaints. Members also inquired whether arrested persons were actually brought to court within 24 hours, or as soon as distance permitted, during operations conducted to combat terrorism and insurgency; whether detainees were segregated from convicted prisoners; and whether offenders under 18 were separated from adult offenders.

310. Members were also concerned about the exemption from criminal responsibility, pursuant to article 20 of the Peruvian Penal Code, for abuse of power and unnecessary use of violence by a person acting under orders. Noting that similar provisions in other States parties had been found to be in

violation of the Covenant, members wondered how and in how many instances that exemption had been granted. Members also wished to know about the impact of the presidential decree of 1990, which restricted the options to challenges to acts performed in an official capacity, as well as about presidential immunity from prosecution. More information was also requested on the new Penal Code, which did not seem to be applicable to the armed forces and police; enforced conscription; prison conditions; the guarantees and protection given to prosecutors during the performance of their functions; and the impact on rights guaranteed under article 14 of the Covenant applying the concept of collective responsibility in the emergency zones. Given that some 75 per cent of the prison population in Peru consisted of people who had not yet been tried, among whom there were several hundred female prisoners with over 100 dependent children, members asked whether it was the view of the Government that there was no need in practice to take account of the provisions of article 9 of the Covenant.

311. In reply to the questions raised by members, the representative of the State party said that disappearances, extrajudicial executions and torture, or any other form of physical violence, were offences under Peruvian law. The Government was aware of the need to give priority attention to children and the adoption of relevant policies and decrees had been accelerated. The rights of the unborn child were protected by article 2 of the Constitution and abortion was punishable under the Penal Code, except when carried out on the recommendation of a panel of doctors. Infant mortality had dropped substantially with the aid of the United Nations Children's Fund (UNICEF). Statements obtained through the use of violence were not admissible and the law on habeas corpus and amparo contained provisions to ensure that ill-treatment was not used to extract confessions. No one could be arrested without a written court order from a judge, or from the police in cases of flagrante delicto, and those arrested had to be informed immediately and in writing of the reasons for their detention. Such persons had the right to communicate with and be advised by an attorney of their choice from the time they were charged or arrested. No one could be held incommunicado except where the investigation of a crime made it indispensable. In all cases, the arrested persons would be brought before court within 24 hours or within the time needed to arrive at the court. An aggrieved detainee could invoke the remedies of habeas corpus and amparo.

312. In connection with a directive which, according to Amnesty International, "purported to permit troops to carry out killings without a trace", the representative stressed that the directive was not government policy and not part of the legislative corpus of Peru. With regard to enforced recruitment, the representative attributed guilt to the terrorist group, the Shining Path, which frequently obliged minors to join its ranks. However, there was considerable interest in forming urban patrols for protection on a block-by-block basis. Military service was governed by the Compulsory Military Service Act, which provided for military training for all eligible men and women. The Government was concerned about disappearances and was conducting investigations through prosecutors and Red Cross officials. A special Senate Commission on violence and pacification had been established and was drafting amendments to the law governing the state of emergency. Efforts were also being made to remedy shortcomings in prisons and to improve basic facilities such as meals. All children above three years of age had recently been removed from prison institutions.

Right to a fair trial and right to privacy

313. With regard to that issue, members of the Committee wished to receive information on guarantees for the independence and impartiality of the judiciary and measures adopted to prevent intimidation of the members of the judiciary; legal and administrative provisions governing tenure and discipline of members of the judiciary; and the organization and functioning of the Bar in Peru and the availability of defence counsel in criminal cases. Members also wished to know whether there were any special courts and, if so, what their jurisdiction and review or appeal procedures were; who could appoint or dismiss judges and under what conditions; how jurisdiction was divided between military and civilian courts in cases where military personnel were allegedly involved in disappearances and torture; how the requirement to provide legal representation could be met in practice given the shortage of lawyers in the country; and whether lawyers were subject to territorial restrictions.

314. In addition, members wished to know whether the principle of exclusivity and unity of the jurisdictional function had been suspended or derogated from during the state of emergency; whether the provision in the Constitution whereby 2 per cent of the annual budget should be set aside for the judicial branch had been adhered to; and whether the administration of justice had been abrogated during states of emergency.

315. In his response, the representative of the State party said that the independence and impartiality of judges was guaranteed under the Constitution. A general office was established by law for the monitoring of the judiciary and a range of sanctions and disciplinary measures was also provided for. Judges were appointed by the President on the advice of the National Judges' Council. Lay judges were called upon to deal with minor cases and misdemeanours only. There was a free legal advice scheme in Peru and any detained person had the right to be advised by and talk with a lawyer of his choice. There were about 18,500 lawyers in Lima and lawyers were all members of the Peruvian Federation of Bar Associations. Jurisdiction was based on the fact that each department of Peru was a separate judicial district. All courts in Peru formed part of the judiciary system or the system of military justice. Civilians were subject only to civilian jurisdiction. In cases of jurisdictional conflicts between civilian and military tribunals, it was the function of the Supreme Court to settle the matter. The remedies of habeas corpus and *amparo* could be brought before any judge, who was obliged to consider them. Appeals against judgements by a military court were possible, failing which the accused could make use of a complaint procedure. As of 1991, the budget for the judicial branch had been increased to 2 per cent of the central Government's budget as required by the Constitution. Only the rights guaranteed under article 31 of the Constitution had been derogated from and guarantees relating to the administration of justice had not been affected by the states of emergency.

Freedom of movement and expulsion of aliens; right to privacy; freedom of religion, expression, assembly and association; and right to participate in the conduct of public affairs

316. With reference to those issues, members of the Committee wished to receive information concerning grounds for the expulsion of aliens; procedures for the legal recognition and authorization of various religious denominations

and as to whether the Roman Catholic Church enjoyed privileged treatment; limitations on freedom of the mass media; and restrictions on the right to vote imposed on the armed forces and the police. In the latter case, they wished to know, in particular, what the Government was doing to ensure that denial of voting rights did not alienate the armed forces and the police from civil society. They also requested clarification of the statement in the report that "in most cases, shutdowns, strikes or similar work stoppages have been settled through ordinary legal procedures" and of the provisions of the recent presidential decree authorizing certain powers of censorship in the interest of national security and permitting the armed forces access to the universities.

317. In addition, members wished to know whether there were displaced persons in areas close to military activities and how the population in such areas was protected; what type of acts were deemed by the Aliens' Act to contravene the law, morals, decency and security of the State; and whether the prohibition against expressing an opinion critical of the State would restrict the constitutionally protected freedom of expression and whether that prohibition extended also to those in power; what the functions were of the State Intelligence Bureau; how the emergency powers relating to the abrogation of existing collective agreements and the suspension of collective bargaining processes had been applied and whether any compensation was paid to those who had been affected by such abrogation of rights; how the detention under the anti-terrorism law of two newspaper editors could be reconciled with respect for freedom of expression.

318. As regards the right to privacy, members noted that existing provisions in Peru seemed to contain no express prohibition against the use of electronic devices for interfering with communications and asked what the Government's response had been to the reported telephone taps placed on union leaders, candidates for office and reporters. Members also wished to know whether there had been any derogations from the inviolability of communications during states of emergency.

319. In response, the representative of the State party said that the Constitution established the right of any citizen to freedom of movement, except where such movement was prohibited for reasons of public health. No person could be expelled except by special mandate or by application of the Aliens' Act. The expulsion of aliens was justified only in exceptional cases. There were no procedures for the recognition and authorization of different religious denominations and no preferential treatment was accorded to the Roman Catholic Church. The equality enjoyed by different religious denominations was reflected in the composition of the Peace Council, whose members represented a wide range of religious beliefs and denominations. The Constitution also guaranteed freedom of information, opinion and expression and the diffusion of ideas without prior authorization or censorship or other impediment. Newspapers, radio and television were entirely free to express opinions highly critical of the Government. Any limitation on freedom of expression was considered a crime. The right to strike had likewise been established in the Constitution. Members of the armed forces and police on active duty could not vote or stand for election, but upon their retirement they regained their right to do so. No newspaper editors were being held under the anti-terrorism law, but some unofficial leaders of the Shining Path were being detained for the offence of advocacy of terrorism. The national

intelligence system, which had been implicated in money laundering, had been abolished by the Congress. Communications continued to be inviolable even during states of emergency and wire-tapping had been stopped.

Non-discrimination, equality of the sexes before the law and protection of family and children

320. In relation to those issues, members wished to know how effective the measures designed to promote full equality of the sexes had been; how the treatment of aliens differed from that of citizens; what the law and practice were concerning the employment of minors; and whether men and women working under the same conditions received the same salaries; and what the percentage was of women serving in government departments, the legislature and the judiciary. Members also requested information concerning child prostitution and trafficking in women and children; the reported employment of 1 million children under the age of 14 in the country, child slavery in the Madre de Dios gold mines, and how the Government viewed such reports; and Peru's environmental protection policy.

321. Responding to the questions that had been raised, the representative noted that the Constitution did not allow for any discrimination on the basis of sex. The relevant statistics showed that government policies had had a positive impact on political participation by women, who had also made great strides in economic and social status. The Constitution provided for just remuneration under the same conditions for men and women, without distinction. There was currently one minister and some 15 to 20 women in the Chamber of Deputies and the Senate. Aliens could buy property only in border provinces. In general, there were some limits on the political rights of aliens when national security was threatened. Children in employment were protected by law and minimum age limits had been set for children employed in various industries. The Government was aware, however, that the economic and social conditions had forced many youths to work under illegal conditions and an ad hoc commission was currently reviewing the relevant legislation. Several voluntary programmes, which were partly subsidized by the Government, had recently begun to provide street children with food and shelter. Although child labour had once existed in the Madre de Dios gold mines, it had never amounted to slavery and had been abolished. The Government had also undertaken an ambitious project to establish a foundation for the welfare of all children in Peru. A chapter on crimes perpetrated against the environment and public health had been included in the new Penal Code.

Rights of persons belonging to minorities

322. With reference to that issue, members requested additional information concerning legislation to give effect to articles 34, 35 and 169 of the Constitution, as well as the relevant practices. They also wished to know what factors and difficulties had been encountered in implementing article 27 of the Covenant, including the situation of indigenous people in areas where production of and trade in drugs caused problems; what measures had been taken to ensure effective participation by minority groups in the political process; whether there was any minority representation in Congress; and what assistance had been given by the Government to the indigenous peoples who were caught between the Shining Path's interest in drug production and the repressive activities carried out by the army and police.

323. In response to those questions, the representative of the State party said that the Constitution recognized the legal existence and capacity of the peasant and indigenous communities, who were autonomous in their administrative organization, community work and use of land, and that their land ownership, traditions and practices were respected by the Government. However, owing to the serious impact of terrorism and drug trafficking in those communities, government policies that aimed at ensuring minority participation had fallen short of expectations and additional activities were being undertaken. One of the objectives of the government strategy to combat drug trafficking was to enable indigenous communities in coca-growing regions to enter into negotiations with businesses interested in investing in other crops. Peasant communities could also organize politically.

324. In compliance with the decision adopted by the Committee at its 1148th meeting, the State party submitted a supplementary report dealing with events occurring subsequent to the consideration of the second periodic report at the Committee's forty-fourth session, in particular in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant.

325. Referring to the events that had taken place on 5 April 1992 and the ensuing state of emergency, members wished to know which of the rights protected under the Covenant were being suspended; how the independence of the judiciary was being ensured when all new judges were appointed by the President; what had been the benefit, if any, of the dissolution of Congress and the removal of judges; what measures were being taken to control the military and security forces; whether allegations of the crimes of violence, enforced disappearance and summary execution were investigated and the perpetrators punished; and whether habeas corpus was still in effect. Members also questioned the constitutionality of the steps taken by the President of Peru on 5 April 1992, which some saw as a coup d'état, and wished to know whether the Constitution was still in force; what the constitutional basis was for the reconstruction measures being taken; whether the relevant details regarding the state of emergency had been communicated to the Secretary-General; and what measures had been taken to alleviate hardships and to ensure implementation of the Covenant during the state of emergency.

326. In addition, members wished to know the basis for the conclusion, by the Government of Emergency and National Reconstruction, that a very high percentage of Peruvians had supported the measures taken on 5 April 1992. Further information was also sought on the disaster that had taken place in the Castro Castro Prison; the activities of paramilitary groups, rondas campesinas and peasant patrols; the house arrest of politicians after 5 April 1992; the register of detainees; violations of human rights by members of the military forces and whether any training had been provided to them on human rights; the jurisdiction and duties of the courts dealing with offences committed by juveniles; the position of former President Alan García and whether he would be allowed to return to Peru and to participate in the elections; restrictions on a citizen's right to participate in the political life of the State; the number of political prisoners; details of Decree-Law No. 25592 and the criteria for the selection of personnel for the newly formed Human Rights Council in Peru. Members also reiterated concerns that had been voiced earlier relating to such matters as the right to life, the role of the military courts, the need to combat terrorism other than by State terrorism, and, more generally, the overall impact of the state of emergency on the implementation of the provisions of the Covenant.

327. In reply, the representative of the State party reassured the Committee that the Peruvian Government was committed to institutional normalization. She told members that the state of emergency, enforced in accordance with article 231 of the Constitution of Peru, was temporary and exceptional and had led to no derogation whatsoever from articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18 of the Covenant. Under article 231, the armed forces assumed control of internal order in the emergency zones. While the judiciary had been briefly suspended owing to its reorganization, it was functioning normally at all levels. The Attorney General's office had been more active in protecting human rights. Measures to reduce tension were under way, including a fund for compensation and development; education and training; a national food programme, and a five-year plan of action for children. Concerning enforced disappearances, the representative said that officials found guilty of such acts would be punished in accordance with the law. A nationwide network of registers of detainees was being set up to facilitate the dissemination of information to prosecutors as well as to human rights bodies. There was a separate register for complaints concerning disappearances. Excesses had been committed in implementing the anti-terrorist strategy but there was no permanent impunity for those who had perpetrated them. Members of the security forces, including the armed forces and the police, who had committed illegal acts were prosecuted and tried in military courts. Under the provisions of Decree-Law No. 25992, adopted on 26 June 1992, they could be sentenced to prison terms of up to 15 years. There were currently no political prisoners in Peru. Freedom of expression was fully respected and exercised. Habeas corpus had always been in force despite the suspension of the judiciary. There had been no recent increase in the number of declared disappearances.

328. The Constitution of Peru was still in force, although some of its provisions had been temporarily suspended. These, however, did not include any of the articles of the Covenant to which the supplementary report referred, namely articles 4, 6, 7, 9, 19 and 25. The incident at Castro Castro Prison had been sparked off by the transfer of women terrorists to another jail and had led to the deaths of some 40 persons, but it had not been the Government's policy to initiate violence. The rondas campesinas and peasant patrols were not armed by the military but were under government supervision. The former President of Peru, Mr. García, had gone into voluntary exile but could eventually return to Peru. He would be able to participate on the same basis as any other citizen - or indeed, political party, representative institution or organization - in the dialogue leading up to the elections for the new Democratic Constituent Congress. A high-level Commission was currently evaluating various proposals for improving the Constitution. Once the new Congress had been elected, it would be empowered to investigate the actions taken by the Government since 5 April 1992.

329. In response to other questions, the representative said that laws had been passed to provide training on human rights for the police and armed forces. The house arrest of politicians was a security measure to prevent the Shining Path or "Tupac Amaru" from taking advantage of the situation to incite uncontrollable commotions and disturbances. Offenders aged under 18 years were not sent to prison but to special institutions where they received guidance rather than punishment. There was, however, no juvenile court in Peru.

Concluding observations by individual members

330. Members of the Committee expressed appreciation of the State party's cooperation in submitting additional information and in complying with the Committee's requests for a supplementary report occasioned by the events that had taken place in Peru on 5 April 1992. While the representatives of the State party had made a commendable effort to respond to their queries, members regretted that their concerns had not been adequately addressed in the additional information that the Government had submitted, which left most of their questions unanswered. Members were not satisfied that their request for a supplementary report made at the Committee's forty-fourth session had been met adequately. As a result, members found it difficult to form a comprehensive view of the human rights situation in Peru during the period under review and, in particular, since 5 April 1992.

331. Members found little information in the report itself relating to the period prior to 5 April 1992 that was positive. Subsequent developments in respect of the implementation of the rights and freedoms protected under the Covenant had, under the Government of Emergency and National Reconstruction, also not been encouraging. In particular, members were deeply concerned about terrorism, which appeared to be part of the daily life in Peru and was an obstacle to the application of the Covenant. Members condemned not only the activities of terrorist groups but also the excessive force and violence used by the military, the security forces and paramilitary and civilian groups. Members considered that combating terrorism with arbitrary and excessive force could not be justified under any circumstances.

332. Another principal concern of members of the Committee related to the constitutional justification of the changes in Peru brought about by the events of 5 April 1992. It appeared that the ensuing suppression of the Constitution and dissolution of Congress had rendered the state of law uncertain, left the legal system and judiciary in disarray and resulted in the de facto suspension of habeas corpus. The Committee had reason to believe that, subsequent to 5 April 1992, many of the rights contained in the Covenant, including non-derogable rights specified under article 4, paragraph 2, had been derogated from.

333. Members also expressed concern about the house arrest of politicians and did not find the reasons for such detentions convincing. Women who had not been found guilty of an offence had been detained, together with their children. Those detentions could not be considered compatible with the rights guaranteed under the Covenant. Members expressed regret that no response had been received regarding follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely, communications Nos. 202 (1986) and 203 (1986), despite the request by its Special Rapporteur and repeated queries raised during the dialogue. Noting the intention of the Government of Peru to restore democracy and law and order, members of the Committee considered that, even during the current transitional period, the Government had to pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that the emergency circumstances warranted any derogations from such rights, they were to be strictly confined to the limitations specified under article 4 of the Covenant, and other States parties should be duly notified.

334. The representative of the State party assured the members of the Committee that their views and concerns would be communicated to her Government but emphasized that Peru clearly had difficulties in complying with its obligations under the Covenant.

335. In concluding the consideration of the second periodic report and the additional information and supplementary report submitted by Peru, the Chairman joined the members of the Committee in thanking the delegation of the State party for its cooperation. Noting that he shared most of the observations and views expressed by the members, he stressed that the Committee's intentions were to assist the Government of Peru in applying the Covenant. He expressed the hope that the transitional period in Peru, during which the Government envisaged bringing about changes and reconstruction, would be brief. He hoped that the next periodic report, due in April 1993, would reflect the full implementation of the rights and freedoms under the Covenant.

Comments of the Committee

336. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

337. In accordance with that decision, at its 1175th meeting, held on 30 July 1992, the Committee adopted the following comments.

Introduction

338. The Committee expresses its appreciation of the Government of Peru's cooperation in continuing the dialogue during the consideration of the State party's second periodic report, and especially for providing the additional information on the report as offered by the delegation and for complying with the Committee's requests for a supplementary report relating to the situation in Peru after 5 April 1992. While the representatives of the State party have made a commendable effort to answer the numerous queries raised by members, the Committee regrets that its concerns have not been adequately addressed and that most of the questions were not answered satisfactorily, both in the oral presentations and in the addendum to the report. It notes with disappointment that the delegation's offer, made at the Committee's forty-fourth session, for some of the answers to be given in writing had not been acted upon. It also regrets that the State party did not provide information on problems relating to the Covenant's application as a consequence of the events of 5 April 1992, as was requested by the Committee. As a result, the Committee has found it difficult to form a comprehensive view of the human rights situation in Peru during the interval under review and, in particular, the period after 5 April 1992.

1. Positive aspects

339. The Committee welcomes the enactment, both before and after 5 April 1992, of legislation concerning procedures for registering complaints about

extrajudicial detention and torture and allowing prosecutors to visit and monitor detention centres. The Committee also welcomes the legislative expression of culpability for all persons, including State officers, who engage in terrorism and in arbitrary and excessive use of force or who are responsible for disappearances. The Committee also regards as an important feature the creation of a new register of detainees and the envisaged change in the composition of the National Council for Human Rights, in order that members of different government agencies whose activities affect the realm of human rights be represented therein. The Committee notes also the recent strong statements addressed to the army and police by the President of Peru concerning the importance of human rights.

2. Factors and difficulties impeding the application of the Covenant

340. The Committee finds little information in the report itself that relates to the period before 5 April 1992 and notes the Peruvian Government's view that much of the system existing before that date suffered from serious and profound flaws and needed reconstruction. Developments after 5 April 1992, when the Executive Branch seized all powers of the Peruvian State and constituted the Government of Emergency and National Reconstruction, have also not been encouraging. The Committee considers that the internal disorder and lawlessness in Peru, both before and after 5 April 1992, have obstructed the Covenant's effectiveness and, in some cases, rendered it inapplicable.

341. In this connection, the Committee observes that, during the entire period under examination, the assumption of power by military forces in the areas declared to be under a state of emergency has rendered ineffective the implementation of certain rights and freedoms guaranteed under the Covenant. The Government's acceptance of civilian vigilante groups that have full army support, notably the peasants' patrols (rondas campesinas) has worsened the situation, and it is clear that the Government is not in a position to rectify various abuses, including excessive and indiscriminate retaliatory responses to terrorist acts.

342. It remains to be seen if the changes brought about by the Government of Emergency and National Reconstruction will assist in the restoration of internal law and order in Peru. At the present time there is no evidence that this is the case. The concentration of all power in the hands of the Executive, the unilateral changes by the Government of Emergency and National Reconstruction in the Judiciary, and the serious disruptions to the legal system have, in the Committee's opinion, impeded the application of the Covenant in Peru.

3. Principal subjects of concern

343. The Committee expresses its deep concern about the terrorism that appears to be part of daily life in Peru. The Committee condemns the atrocities perpetrated by insurgent groups and is particularly disturbed by the scale of terrorist violence, which shows no consideration for the most basic human rights. Nevertheless, the Committee also censures excessive force and violence used by the military, the paramilitary, the police and armed civilian

groups. It is troubled by the great number of complaints of extrajudicial executions and disappearances attributed to the security forces. In this respect, the Committee is deeply concerned about the absence of civilian control over the military and paramilitary groups, especially in the zones under their control, which in some cases amounts to impunity. In particular, the Committee regrets that those groups can be tried for acts of violence only under military law. The Committee considers that combating terrorism with arbitrary and excessive State violence cannot be justified under any circumstances.

344. The Committee also expresses concern about the circumstances relating to the events of 5 April 1992. The terms of Decree-Law No. 25418, which transformed the Executive into a Government of Emergency and National Reconstruction and dissolved other constitutional powers, has effectively suspended important parts of the Constitution and rendered the state of law uncertain; it has left the legal system and the judiciary in disarray; it has also resulted in the de facto suspension of habeas corpus and amparo and in the retroactive application of new legislation, especially that drawn up for specific cases.

345. The Committee has serious concerns about the application of the state of emergency in Peru. No formal notice of derogation relating to this period has been received by the Secretary-General. Procedural requirements have not been complied with. Although the Peruvian delegation told the Committee that no non-derogable right under article 4 had been derogated from, the Committee was not informed which articles of either the Covenant or the Constitution were regarded as suspended.

346. The temporary detention on 5 April 1992 of opposition leaders, mainly politicians, labour leaders and journalists, is also a cause for concern and the Committee does not find the reasons for such detentions convincing. Nor can the unavailability of certain rights to those and other persons, resulting from the events of 5 April 1992, be legally justified.

347. The Committee also observes with concern that many people, including women and children, are held for prolonged periods before trial in police cells. That is not compatible with the rights guaranteed under article 9 of the Covenant.

348. A further matter of concern related to follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely communications Nos. 202 (1986) and 203 (1986). The Committee regrets that no response has been received, despite the request by its Rapporteur on Follow-up and repeated queries raised during the dialogue.

4. Suggestions and recommendations

349. The Committee notes the intention of the Government of Peru to restore democracy and the rule of law. However, it considers that, especially during the current period in which the totality of the State's powers lies in the Executive, the Government must pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that emergency circumstances warrant derogation from such rights, they should be

strictly confined to the limitations specified under article 4, and other States parties and the Committee should be duly notified of the facts and details of such derogations. The Committee hopes that the democratic system will be re-established as soon as possible. As elections for a Constituent Assembly have been scheduled for 22 November 1992, the Committee looks forward to seeing full implementation of the rights and freedoms under the Covenant in the near future.

COLOMBIA

350. The Committee considered the third periodic report of Colombia (CCPR/C/64/Add.3) at its 1136th to 1139th meetings, on 2 and 3 April 1992 (CCPR/C/SR.1136-1139). (For the composition of the delegation, see annex VIII.)

351. The report was introduced by the representative of the State party, who explained that, although Colombia had enjoyed one of the highest levels of economic development in Latin America during the past 20 years, the country had been plagued by a guerrilla movement that had used social and economic disparities as justification for its actions. Terrorist groups associated with drug traffickers had threatened the country and brought the judicial system to the brink of collapse. Since such groups seemed to enjoy impunity, citizens had started losing faith in the State's capacity to defend them from guerrilla attacks. Accordingly, some individuals, occasionally with the complicity of government officials, had formed paramilitary groups that had launched extermination campaigns against persons suspected of belonging to the guerrilla movement.

352. In order to overcome those difficulties, the Colombian Government had proposed a negotiated settlement of the conflict with the guerrilla movement and a truce had been signed, leading to the convening of a National Constituent Assembly in 1991. Members of the Assembly had been elected on the basis of a single national election district, which had given indigenous groups and other minorities an opportunity for representation. The result had been a pluralistic Constituent Assembly representing all sectors and political forces. The new Constitution, promulgated by the Constituent Assembly in July 1991, enshrined all the rights provided for in the Covenant and had increased the State's capacity to deal with drug traffickers.

353. Various other efforts had been made, including the development of an integrated policy on human rights, the adoption of a bill of rights and the constitutional recognition of the country's multicultural character. The state of emergency, which had been in effect for seven years, had been lifted in July 1991. Other positive developments included the introduction of a new legal remedy, *tutela*; the appointment of a parliamentary ombudsman; the strengthening of the protection of judges and witnesses; the institution of procedures for the immediate follow-up of reports of disappearances and the establishment of a new Constitutional Court to strengthen the protection of human rights. Additionally, fundamental changes had been introduced in the electoral system, with the Senate now also including representatives from indigenous communities; efforts had been made to encourage direct participation by citizens through the use of referendums and the introduction of democratic procedures in all aspects of public life; and various

educational programmes on human rights had been developed, including compulsory human rights training for all levels of the armed forces. As a result of all those measures, complaints of torture and disappearances had dramatically decreased, as had assassinations of political figures, although a certain level of violence had persisted.

Constitutional and legal framework within which the Covenant is implemented and the state of emergency

354. With regard to those issues, members of the Committee wished to receive information on the impact of the adoption of a new Constitution on the status of the Covenant within the legal system; on the practical consequences of the lifting on 26 July 1991 of the state of siege; on the rights that had been derogated from during successive states of siege which had ended on 7 July 1991; on the basis under the new Constitution for ensuring conformity with article 4, paragraph 2, of the Covenant; on measures taken to combat "death squads", paramilitary groups and private militia and on how the significant reduction of sentences mentioned in the report could be reconciled with the purpose of those measures; and on follow-up action taken as a result of the views adopted by the Committee under the Optional Protocol with regard to Colombia.

355. In addition, it was asked how contradictions between domestic legislation and the Covenant, if any, were resolved; whether a provision of the Covenant could be directly invoked before the courts; why the new Constitution did not prohibit discrimination on the grounds of colour, religion or property; why only 61 of the 622 members of the armed forces accused of involvement in paramilitary activities had thus far been punished; and whether Colombia was considering acceding to the Protocols I and II Additional to the Geneva Conventions of 1949. Further information was also sought on the remedy of *tutela*; on the status, organization and activities of the judicial police; on measures taken against the de facto and *de jure* impunity of the armed forces and the police; and on article 91 of the Constitution, according to which obedience to an order given by a superior could constitute a defence if the order had been given and carried out in the line of duty.

356. With regard to article 4 of the Covenant, further information was sought on the new constitutional arrangements relating to the introduction of a state of emergency, and it was asked whether the circumstances in which a state of emergency might be declared could be challenged before the Supreme Court.

357. In his reply, the representative of the State party said that the new Constitution incorporated all the rights laid down in the Covenant and had established new mechanisms to ensure rapid and effective compliance with human rights provisions. The Covenant enjoyed a supralegal status, intermediate between the law and the Constitution, and judges were bound to take account of its provisions when interpreting domestic norms relating to human rights. The Covenant had been invoked by the Council of States even before 1991 in numerous cases of torture or mistreatment by the public authorities against persons deprived of their liberty. In keeping with the provisions of the Covenant, the new Constitution prohibited discrimination based on race, religion, colour, family or national origin or sex and constitutional rights were extended to all, irrespective of their social and economic status.

358. The newly established remedy of tutela enabled any citizen to seek before the courts the protection of his fundamental rights. The tutela system tended to favour the complainant, who was under no obligation to appear with an attorney, to cite norms of the Constitution or to give any juridical foundation to his case. Unless the accused party refuted the allegations within three days, the substance of the tutela report was deemed to be true and measures necessary to end the violation were ordered.

359. New provisions had also been introduced to deal with states of emergency. The state of siege had previously been used to induce members of armed groups to return to civil society as well as to provide protection from intimidation and threats for judges and witnesses involved in drug-trafficking trials. In 1990, the Supreme Court had found some of the decrees promulgated during the state of siege, in particular those relating to restrictions of trade-union freedoms, to be unconstitutional and a bill had been introduced providing that human rights norms could be limited under exceptional circumstances but never suspended. The new Constitution stipulated that statutory laws could specify what limitations might be placed on rights in a time of upheaval, but those limitations did not apply to the non-derogable rights referred to in article 4, paragraph 2, of the Covenant.

360. Referring to the impact of guerrilla warfare and drug trafficking on the Government's efforts to comply with the provisions of the Covenant, the representative said that guerrilla activities directed against the civilian population posed very complex human rights and public order problems, particularly as they were mainly confined to rural areas in which the State could maintain only a limited presence. Guerrilla warfare had frequently led to retaliation by civilians, who had formerly been entitled by law to form armed groups under military protection for the purpose of self-defence. Beginning in 1989, negotiations with the guerrillas had helped to reduce the direct participation of landowners in drug trafficking and had curbed retaliatory action against those suspected of ties with guerrilla groups. It had also been decided to abolish penalties for those accused of membership in armed self-defence groups declared illegal by the Government, provided that they had not committed other crimes.

361. With respect to politically motivated murders, he noted that the elections to the Constituent Assembly held in 1991 had not been accompanied by general acts of violence or intimidation. Among the guerrilla groups that had participated for the first time in national elections, only the former People's Liberation Army had been affected by violence committed by groups trying to sabotage or obstruct the peace process. Furthermore, cases where members of the armed forces had been involved in paramilitary activities had sharply declined and seemed to involve only low-ranking members of the armed forces corrupted by drug traffickers in the local areas where they were serving. A number of police officers were currently under investigation for alleged participation in so-called "social clean-up vigilante groups". Only two rural massacres had been reported in 1991, compared to dozens in 1988 and 1989, and they were still under investigation. In 1991, a number of paramilitary groups had been disarmed in areas where their activities had been very widespread and efforts had also been made to increase the presence and visibility of the army in areas where there was evidence of large-scale paramilitary activities.

362. With regard to measures taken to protect those whose human rights were threatened, the representative said that significant steps had been taken to protect judges and witnesses, who had previously been faced with the choice of submitting to threats or risking their lives. Among measures taken to that effect were the creation of a 3,600 strong-protection team and the holding of training seminars for judges in defence techniques. Judges were currently concentrated in five cities. The most effective way of protecting them was the system of anonymity, whereby their identity was not known by the parties or the defence lawyer. That system had, however, one major drawback in that it impinged on the guarantee of a fair trial. Colombia was facing the difficult problem of striking a balance between the need to combat organized crime, on the one hand, and the need to ensure the enjoyment of fundamental rights, on the other. The current relatively low incidence of abuses and the decline in the number of reports of torture or disappearances demonstrated that the measures adopted were yielding positive results.

363. Responding to specific questions relating to the armed forces, the representative explained that the new Constitution had changed the status of the military. The position of Minister of Defence was now being held by a civilian, who was accountable to the Congress and who had a constitutional obligation to train members of the armed forces in human rights matters. The armed forces had currently no legal authority over civilians and the internal investigation services of the armed forces were prohibited from having any jurisdiction over civilians, even during states of emergency.

364. Concerning the views adopted by the Committee under the Optional Protocol with regard to Colombia, the representative explained that they related mostly to situations that had now been overtaken by the new constitutional changes. Under the new Constitution, administrative detention was no longer allowed and all detainees had to be brought before a judge within 36 hours.

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to fair trial

365. In connection with those issues, members of the Committee wished to receive further information on measures taken to investigate cases of disappearances, extrajudicial executions or torture, to punish those found guilty and to prevent the recurrence of such acts. They also wished to know whether there had been any changes to the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what the current rate of infant mortality was; how the infant mortality rate among the ethnic groups was as compared with that of the general population; what concrete measures had been taken by the authorities to ensure the strictest compliance with article 7 of the Covenant; whether confessions or testimony obtained under torture could be used in court proceedings; what arrangements had been made for the supervision of places of detention and for receiving and investigating complaints; what guarantees there were for the independence and impartiality of the judiciary; what measures had been adopted to prevent intimidation of members of the judiciary; what legal and administrative provisions governed tenure, dismissal and disciplining of members of the judiciary; and whether there were any judges who performed their functions anonymously.

366. In addition, it was inquired what the impact had been on the level of violence in the country of the establishment of the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the Office of the Presidential Adviser for Rehabilitation, Normalization and Reconciliation; what measures had been taken to provide assistance to persons displaced by the violence; what specific measures had been taken to prevent mass murders by paramilitary groups; what was the average period as well as the maximum length of pretrial detention and remand in custody under the 1990 Anti-terrorist Act and during a state of emergency; and whether persons deprived of their liberty could be held incommunicado. Further information was also sought on article 233 of the Penal Code.

367. In his reply, the representative of the State party emphasized that, in response to the firm stand taken by the President, preventive measures had been adopted to avoid the recurrence of acts of torture, disappearances and extrajudicial executions. Senior military officers had condemned such illegal actions, generally committed by low-ranking officials, and there had been official requests to external bodies to investigate allegations of violations perpetrated by the military. Investigations of members of the police or armed forces accused of extrajudicial executions, homicide, torture or mass murder were carried out by examining magistrates from civilian or military courts. To address the problem of disappearances, which remained of serious concern, a new national investigation body, the *Fiscalía*, had been established to coordinate investigations and assist with the identification of victims who had been killed.

368. The new Code of Penal Procedure had established measures intended to reduce the possibility of torture while in detention. In 1991, the length of time an individual could be detained before being charged had been reduced to 5 days in civil cases and 24 hours in cases of detention under military jurisdiction. In addition, the Red Cross had been given access to all places of detention. Public attorneys, lawyers from the Office of the Attorney-General and municipal officials routinely visited prisoners and the police and military were required to notify municipal officials within 24 hours of any arrest. Another protection was the requirement for immediate access to a lawyer upon arrest and the prohibition of incommunicado detention. Furthermore, under article 29 of the Constitution, confession or testimony not given freely could not be used in court proceedings and detained persons could remain silent and could not be forced to testify against themselves or their families. As a consequence of those measures, complaints of torture had dropped drastically although some complaints of torture during the time of transfer to a place of detention after arrest were still being received. Specific cases of torture that had occurred under the old system were still being investigated and over 200 military or police personnel accused of violence against persons, such as murder, mass murder or torture, had been suspended.

369. The Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights received complaints and reports of human rights violations and carried out follow-up work on investigations conducted by other institutions. The Office of the Presidential Adviser for Reconciliation, Normalization and Rehabilitation formulated policies aiming at a negotiated peace with guerrilla groups and followed cases of abduction, summary execution and other acts carried out by guerrillas. The Office of Public Defender

(Defensor del Pueblo) had been established under the new Constitution to institute proceedings of habeas corpus, receive reports of human rights violations and ensure the defence of individuals who could not afford counsel. The Higher Adjudication Council had been established under the new Constitution to safeguard the independence of the judicial branch by overseeing all financial and budgetary matters and all disciplinary matters. It was composed of impartial, independent magistrates who monitored and evaluated the performance of judges. The system of appointment of anonymous judges had been established so that they could not be interfered with by the Executive Branch or by organized crime.

370. With regard to questions raised relating to internally displaced persons, the representative emphasized that, over the past 40 years, Colombia had been caught up in a process of rapid urbanization. At the same time, economic activities in rural areas had declined sharply and landowners were being abducted by the guerrillas or forced to make routine payments to them. The ensuing emigration of peasants from rural areas to the cities had given rise to a very serious social and economic situation. The Office of the Presidential Adviser for Social Policy provided assistance to family members of victims of violence and gave support through temporary assistance programmes. The Government's National Rehabilitation Plan carried out social investment projects in rural areas affected by violence.

371. Replying to questions raised in connection with child mortality, the representative of the State party said that, as a result of government efforts, the infant mortality rate had dropped to 37 per 1,000 in 1992. That rate had unfortunately declined much less rapidly in the indigenous or minorities communities because those groups lived in inaccessible areas.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association and right to participate in the conduct of public affairs

372. Referring to those issues, members of the Committee wished to receive information on the circumstances under which restricted residence could be ordered under the new Constitution; on the law and practice relating to permissible interference with the right to privacy and the collection and use of personal data; on the privileged treatment, if any, of the Roman Catholic Church as compared with other churches or religious groups; and on whether any popular referendum, as envisaged in article 6 of Legislative Act No. 1 of 1986, had ever been organized.

373. In addition, it was asked whether the right to privacy was guaranteed in practice to the same extent in remote areas as in urban centres and under what conditions a public official could grant an order for wire-tapping or the interception of correspondence. Further information was also requested on the implementation of article 176 of the Constitution; on the impact of the activities of guerrilla groups and drug traffickers on the exercise of the freedom of expression and assembly; on the requirements for authorization of a film by the Film Classification Committee; on the law and practice relating to the exercise of trade-union rights; and on measures taken to protect trade-union activists whose human rights were threatened. Clarification was also sought of certain provisions of the state of emergency bill introduced in January 1992, in particular those relating to the issuance of obligatory safe-conduct passes in some areas of the country.

374. In his reply, the representative of the State party explained that a draft law on states of emergency was pending before Congress and would probably be adopted before July 1992. Under the bill, freedom of movement could be restricted only in very specific circumstances and more extreme restrictions, such as the issuance of safe-conduct passes, could be imposed only during wartime.

375. The new Constitution not only guaranteed the right to privacy, but also sought to adapt that concept to modern technological developments. Article 15 of the Constitution gave individuals the right to have access to computerized data and to request the removal of inaccurate data. Furthermore, only a judge could order wire-tapping or the opening of private correspondence. When it was necessary to collect judicial evidence in rural areas where there might not be a sufficient number of judges, arrangements were made to facilitate travel by judges to those areas. Under the new system in which indictments were drawn up by the new office known as the Fiscalía, all searches had to be authorized by the judicial office coordinating the investigation.

376. In Colombia, there was extensive freedom of expression of all political opinions and, since the television networks were State-owned, an adjudication process established a fair distribution of programming time. A proposal had been introduced to establish an independent national board representing all groups in society to regulate television operations. The Constitution expressly prohibited censorship and the only function of the Film Classification Committee was to issue ratings for suggested audiences. With regard to freedom of assembly and association, the representative underlined that the new Constitution recognized the legality and independence of trade unions, eliminated barriers to their establishment and abrogated a general legislative prohibition on strikes in the public sector. Trade-union leaders whose lives had been threatened had been provided with armed escorts or authorized to carry weapons for self-defence. A programme had also been developed under which, in the past two years, more than 200 teachers facing similar threats had been transferred to new jobs in other areas. Since the promulgation of the new Constitution and the arrest of several drug traffickers with ties to right-wing terrorist groups, violence against journalists had ceased.

377. Another major change brought about by the new Constitution was the granting of full religious freedom. All churches and sects were now equal before the law, and religious minorities enjoyed special protection. The concordat between the Government of Colombia and the Holy See granting the Roman Catholic Church special status was consequently being modified to bring it into line with the new Constitution. The Roman Catholic Church, however, retained significant influence in matters concerning the family and education, although religious education in public schools had now become optional. Although there was no tradition in Colombia of direct participation in decision-making, two direct national referendums had been held, the first to decide whether a constituent assembly should be held and the second to decide on the membership, powers and procedures of the Constituent Assembly.

Non-discrimination, equality of the sexes, protection of family and children and rights of persons belonging to minorities

378. With reference to that issue, members of the Committee wished to receive information on the effectiveness to date of the various programmes and policies designed to achieve equality between men and women; on the activities and accomplishments to date of the Presidential Adviser for Young People, Women and the Family; on the impact of the entry into force of the Minors' Code on the enjoyment by children of their rights under article 24 of the Covenant; on measures taken to address the needs of minors in "anomalous" situations; on the law and practice relating to the employment of minors; on any factors or difficulties hampering the implementation and enjoyment of the rights under article 27 of the Covenant; on measures taken by the Indigenous Affairs Division, the National Committee for Aboriginal Languages or any other governmental bodies to assist in maintaining native cultural traditions or languages in various regions of the country; on any measures envisaged for the protection of minorities, such as the establishment of a Presidential Adviser on Minority Affairs; on measures envisaged by the Special Commission on Amazon Indian Affairs to overcome the ecological deterioration of the area in the Amazon region; and on representation of minority groups in the Constituent Assembly.

379. In addition, they wished to know whether provision had been made for sanctioning parents who mistreated their children; whether Colombia had been confronted with the problem of fraudulent adoption of minors by foreign couples; whether there had been any instances of children being abducted with a view to selling their organs; what measures had been taken to deal with the problem of street children; and whether Colombia had encountered any problems in reconciling development of its oil reserves with the maintenance of a balanced ecosystem. Information was also sought about tensions that seemed to exist in certain areas between the indigenous population and the Black community and about the special jurisdictions where ethnic minorities were authorized to apply their own norms.

380. In his reply, the representative of the State party said that the various programmes and policies designed to enhance the role of women had been very successful. Equal access to education had now been achieved in elementary and secondary schools, as well as in the universities, and women were increasingly represented in senior posts in both the public and private sectors and in political life. Although substantial progress had been achieved and discrimination outlawed in nearly all sectors, much remained to be done, particularly with regard to equal pay, better child-care arrangements and improved training for women. The Office of the Presidential Adviser for Young People, Women and the Family had been established in 1991 to organize group activities for young people, including anti-drug education, as well as cultural and recreational programmes. It had also helped to set up children's homes which catered to more than 1 million children in need. During the 1960s, a time of heavy migration, street children had been a serious problem, but better living conditions and lower birth rates had helped to alleviate the situation. In recent years, such children were mostly those who had run away because of ill-treatment or conflict at home.

381. The Minors' Code had been drawn up in 1990 and attempted to embody the provisions of the United Nations Convention on the Rights of the Child. The

Code contained a set of wide-ranging and practical requirements for the protection of children. One of its aims was to ensure that all young people who had committed offences but were too young to face charges were housed in institutions, separate from adults. Since child labour was still a very serious problem in Colombia, the Code also sought to introduce stricter provisions and adapt State institutions so as to ensure effective monitoring of the child labour situation. Procedures were laid down for dealing with cases of minors ill-treated by their parents or guardians and adoption was carefully regulated in the light of many years' experience of fraudulent adoption by foreigners. Although rigorous investigations had been conducted into reports of trafficking in children's organs, not a single victim or confirmed case had been found.

382. Responding to questions raised in connection with article 27 of the Covenant, the representative of the State party noted that article 7 of the Constitution guaranteed the ethnic and cultural diversity of the nation and that article 70 stressed that all cultures had equal status and dignity before the law. Languages other than Spanish were considered official in the areas where they were spoken. The Constitution recognized the inalienable right of indigenous peoples to certain lands, which had been accorded the status of self-governing territorial entities. The State was required to invest a certain amount in those entities with a view to improving the living conditions of their people, who had full control of such funds. Any natural resources in the entities could be developed only with the consent and participation of the community. Encouragement was given to forms of education which sought to respect and develop the cultural identity of ethnic groups and efforts were being made to safeguard the electoral rights of minorities and improve their representation in Congress. Minorities would also be entitled under article 246 of the new Constitution to establish special jurisdictions within their territories and provision had been made for the protection of bio-diversity and of flora and fauna in the Amazon and other regions. During the five preceding years, the State had recognized the collective ownership by indigenous communities of approximately 15 million hectares of land in the Amazon region and, consequently, the influx of business and individuals seeking to acquire property in the region for development had been curbed.

383. While Colombia's Black community was not protected to the same extent as the indigenous population, the provision under article 63 of the Constitution regarding the inalienability of the communal lands of ethnic groups afforded protection for members of the Black community living in areas of communal land ownership.

Concluding observations by individual members

384. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the third periodic report of Colombia and for having engaged in a very fruitful and constructive dialogue with the Committee. The report had been prepared in conformity with the Committee's guidelines, providing information about factors and difficulties affecting the implementation of the Covenant. It was clear that progress had been made in the area of safeguarding human rights since the submission of the second periodic report. The constitutional reform as well as the establishment of several bodies, such as the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the

Office of the Presidential Adviser for Reconciliation, Normalization and Rehabilitation, had had positive effects on enforcing the rights enshrined in the Covenant. The institutionalization of the peace process and the firm stand taken by the Government to combat all forms of violence by the police, the army and paramilitary groups had been important factors for the improvement of the human rights situation in Colombia.

385. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. Concern was, in particular, expressed about the ongoing violence causing a high rate of homicide, disappearances and torture; the murders of sectors of the population in so-called social-cleansing operations; the impunity of the police, security and military personnel; the persistence of the activities of paramilitary groups; the legal provisions regarding states of emergency; the extent of the jurisdiction of military courts; the remaining areas of discrimination against women and members of minority groups; and problems relating to child labour and the full implementation of article 24 of the Covenant.

386. The representative of the State party thanked the members of the Committee for the dialogue they had carried on with the delegation. He agreed that the remaining central issue faced by his Government was the impunity of criminals. He also explained that, thus far, the Government had been unable to impose stricter controls over the remnants of the military justice system. Further efforts were being undertaken towards greater political openness and the emergence of a culture of tolerance conducive to the peaceful resolution of internal conflicts.

387. In concluding the consideration of the third periodic report of Colombia, the Chairman expressed satisfaction at the outcome of the dialogue with the State party's delegation.

Comments of the Committee

388. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

389. In accordance with that decision, at its 1147th meeting, held on 9 April 1992, the Committee adopted the following comments.

Introduction

390. The Committee expresses its appreciation for the State party's well-documented report, which was prepared in conformity with the Committee's guidelines, highlighting factors and difficulties that impede the implementation of the Covenant and providing information not only about laws and regulations but also about actual practice. The fact that the new Constitution had not yet been adopted at the time of the report's submission made it somewhat difficult for the Committee to acquaint itself with the current situation, but the additional information supplied orally compensated for this to a large extent. The delegation endeavoured to answer all questions from the Committee and its members in an open and direct way,

admitting the existence of problems and negative facts or factors. The report and the additional information provided have enabled the Committee to obtain a comprehensive view of the human rights situation in Colombia.

1. Positive aspects

391. The Committee notes with satisfaction the positive effects of the constitutional reform on the enforcement of rights enshrined in the Covenant. That reform had been preceded by other reforms of great importance for the strengthening of human rights in Colombia, particularly the establishment in 1987 of the Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the establishment of a National Human Rights Unit in the Directorate General of Criminal Investigation. In the same connection, the Committee notes the reorganization and strengthening of the special judicial functions of the Office of the Attorney General, which have had beneficial consequences for the protection and preservation of the judiciary, as well as the creation of the Office of the Government Attorney for Human Rights (Ombudsman). Another positive aspect, which is attributable mainly to the establishment of the Office of the Presidential Adviser for Reconciliation, Normalization and Rehabilitation and the institutionalization of the peace process, has been the success achieved to date in the ongoing reconciliation and normalization process encompassing insurgent guerrilla groups. However, the most important factors for the improvement of the human rights situation in Colombia seem to have been the introduction and establishment of participatory democracy, as well as a firm will to combat all forms of abuse of power, particularly violence by the police, the army and paramilitary units. Finally, the Committee expresses satisfaction that the approach taken by Colombia to the right to self-determination of peoples has been in line with the development of participatory democracy and that Colombia is making real efforts to achieve full equality for minority groups.

2. Factors and difficulties impeding the application of the Covenant

392. The Committee notes that the state of siege, which had been in force throughout the national territory since 1 and 2 May 1984 and which had impeded to a large extent the full application of the Covenant, was lifted as from 7 July 1991. However, all obstacles have not yet been removed. Peace has still not been achieved with all insurgent groups and organized drug trafficking continues, with a considerably negative impact on the implementation of internationally recognized human rights. Also, paramilitary activities have not ceased entirely. These factors continue seriously to restrain citizens' enjoyment of their human rights.

3. Principal subjects of concern

393. The Committee expresses concern about the ongoing violence, causing a rate of homicide, disappearances and torture which, although decreasing, is unacceptable. Of special concern to the Committee have been the murders of sectors of the population in so-called social cleansing operations ("limpieza social"). Moreover, the Committee is concerned about the phenomenon of

impunity for police, security and military personnel. In that connection, the measures that have been taken do not seem to be sufficient to guarantee that all members of the armed forces who abuse their power and violate citizens' rights will be brought to trial and punished. Military courts do not seem to be the most appropriate ones for the protection of citizens' rights in a context where the military itself has violated such rights. The persistence of paramilitary groups also causes concern. Furthermore, the Committee is of the opinion that full guarantees do not exist for adequate implementation of the provisions of article 4 of the Covenant regarding states of emergency. The Committee also notes with concern that the principle of equal pay for men and women has not yet been fully applied in Colombia. The child labour issue is also a matter that violates the Covenant.

4. Suggestions and recommendations

394. The Committee recommends that the State party should intensify its action against all violence resulting in human rights violations. It should eliminate impunity; strengthen safeguards for individuals *vis-à-vis* the armed forces; limit the competence of the military courts to internal issues of discipline and similar matters so that violations of citizens' rights will fall under the competence of ordinary courts of law; and disband all paramilitary groups. The Committee also urges the State party to deal more effectively with problems relating to child labour. Finally, the Committee calls for bringing emergency legislation into conformity with article 4 of the Covenant.

BELGIUM

395. The Committee considered the second periodic report of Belgium (CCPR/C/57/Add.3) at its 1142nd and 1143rd meetings, held on 7 April 1992 (CCPR/C/SR.1142 and SR.1143). (For the composition of the delegation, see annex VIII.)

396. The report was introduced by the representative of the State party, who noted that the Covenant had become part of Belgium's internal law after it had been approved by the Parliament in 1981 and ratified by the Crown in 1983. Under Belgian law, it was for a court to decide whether a treaty provision was directly applicable. In 1971 the Court of Cassation of Belgium had affirmed the primacy of the provisions of international treaties over national laws. A Belgian court might therefore apply national provisions only if they were compatible with those of international treaties directly applicable in internal law. In 1984 the Court of Cassation of Belgium had also affirmed that article 9, paragraph 2, of the Covenant had direct effects in internal law for individuals and, since then, the Court had confirmed such direct applicability in the case of other provisions of the Covenant.

Constitutional and legal framework within which the Covenant is implemented

397. With reference to that issue, members of the Committee wished to know what the status was of provisions of the Covenant that were not directly applicable and those, other than article 9, paragraph 2, of the Covenant, which had been interpreted by the Court to be directly applicable; to what

extent the Covenant was applicable in the legislation of the Flemish, French and German communities; and what difficulties had affected the implementation of the institutional reforms.

398 Members also wished to know whether the Belgian Government, when drawing up new legal provisions, considered itself bound by the Covenant or by the European Convention on Human Rights; whether the Court of Arbitration was competent to apply the Covenant directly; whether it might be more appropriate for the administrative and other executive authorities to decide on the direct applicability of a provision of an international treaty, particularly where its interpretation was not controversial; what criteria were used in establishing international treaties in the hierarchy of internal law; whether an action invoking a provision of the Covenant could be brought before an ordinary court; how the distinction drawn by the Belgian Constitution between civil and political rights was determined in practice; how the rights of linguistic minorities were protected; and how their "linguistic option" in administrative dealings was exercised; whether there was a specific reason for the Belgian Constitution to stipulate that all powers stemmed "from the nation" rather than "from the people"; why Belgium had expressed reservations to articles of the Covenant that were almost identical to the equivalent provisions of the European Convention on Human Rights; and whether the State party intended to accede to the Optional Protocol.

399. In his response to the questions raised by members of the Committee, the representative of the State party said that, in addition to article 9 (2) of the Covenant, articles 9 (3), 14 (1) and (2) and 17 had been declared by the Court of Cassation to be directly applicable. Provisions of the Covenant that were not directly applicable did not confer any right on individuals unless their principles were reflected in domestic legislation. Provisions of the Covenant that were directly applicable took precedence not only over national legislation but also over the enactments of the communes and regions. There were four major difficulties impeding the application of the Covenant, namely, the centrifugal nature of Belgian federalism; the country's bipolar structure; different interpretations of the language law in the north and south; and the need to strike a balance, when allocating resources, between the requirements of national solidarity and those of regional and communal autonomy.

400. The representative further explained that there was basically no difference between the status of the Covenant and that of the European Convention on Human Rights in Belgium's legal system, except in the system for monitoring compliance with those instruments. Monitoring compliance with the Covenant, done through the Committee, was of a political nature, while control of the European Convention was carried out through the European Commission of Human Rights. The stringent procedures of the European Court of Human Rights, which had the power to require Belgium to change any provision of its legislation that was inconsistent with the Convention, had led Belgium to give particular attention to the Convention.

401. The Belgian legislature acknowledged its obligation under article 2, paragraph 2, of the Covenant to adapt internal legislation to the requirements of international law. Where that had not been done, an international provision could have direct effects in domestic law when it was clear and comprehensive, when it required Belgium either to refrain from an action or to act in a specific manner, and when it could be invoked as a source of law by

individuals without the need for any internal legislation for the purpose of implementation. The court was responsible for determining whether a provision had been inadequately incorporated into the law and whether the international provision was clear enough to have direct effects. Any public authority, including the Department of Foreign Affairs, could express its views as to whether a provision had direct effects, but, in the final analysis, it was up to the courts to determine the provision's applicability.

402. Regarding the distinction, made in the Belgian Constitution, between civil and political rights, the representative said the current constitutional reform process aimed, inter alia, at simplifying that complicated issue. The best criterion for determining the nature of a right was the need for the legislature to refer it either to an administrative or an ordinary court. The German community had its own administration and government. The principle of territorial monolingualism required that residents of Flanders speak Flemish, and that residents of Wallonia speak French. In 27 border communes, known as "linguistic option" communes, people had the right to services in a language other than the official language of the commune. Dutch speakers represented a linguistic majority of 5.7 million, compared with 4 million French speakers.

403. Concerning Belgium's reservations to articles 19, 21 and 22 of the Covenant, the representative explained that articles 10 and 11 of the European Convention on Human Rights accorded greater rights of exception than those in the Covenant and Belgium had therefore decided to refer to the more explicit rights of exception in the European Convention. The procedure to ratify the Optional Protocol had been initiated and it was hoped that the Protocol would be ratified before Belgium's next report was considered by the Committee.

Non-discrimination and equality of the sexes

404. Regarding those issues, members wished to know what inequalities still limited opportunities available to women; what measures had been taken to resolve those inequalities; what the restrictions were on the rights of aliens as compared with those of citizens; what problems, if any, had occured because of migrant workers; why the Belgian Constitution, in referring to discrimination, did not discuss sex, race, colour or religion; how minorities were treated in law and in practice; what the "alarm-bell procedures" were; what the basis was for categorizing judges as Dutch-speaking or French-speaking; why legislation had been enacted that discriminated against foreigners because of their nationality; why aliens were obliged to exercise "political discretion"; whether men and women had equal rights regarding their children's citizenship; and how prostitution was viewed.

405. In his response, the representative of the State party said that one fifth of the ministers in the current Government were women. Nevertheless, there were still inequalities in such areas as employment, salaries, training and promotion, as well as working conditions. Legislation and other measures, including equal opportunity programmes, had been adopted to promote equal opportunity for men and women in both the public and the private sectors. Except for rare cases established by law, foreigners enjoyed the same individual freedoms and civil rights guaranteed under the Constitution as Belgian citizens. However, there were restrictions on political activities by foreigners where such activities might pose a threat to public order or national security. The King was authorized, in the public interest, to

prohibit foreigners from living in certain communes. While foreigners were not eligible to vote or to stand for election, it was intended to amend the Constitution to enable European Community citizens residing in Belgium to vote in local and European elections. A Royal Commission on Immigration Policy had been established in 1989 to investigate the problems of migrant workers, to identify appropriate measures to promote mutual acceptance between immigrants and indigenous communities and to create a harmonious multicultural society. In its first two reports the Royal Commission had proposed a wide range of measures, including granting Belgian nationality, by applying the principle of jus soli, to second-generation immigrants whose parents had been legal residents in Belgium for more than 10 years.

406. Regarding minorities and intercommunal cooperation, the representative said there were legal and constitutional mechanisms to foster cooperation between communities and regions, as well as to protect minority languages in various regions. In order to ensure linguistic equality among judges, the language in which they earned their diplomas determined the linguistic group to which they belonged.

407. Since the Covenant expressly prohibited discrimination on specific grounds, a prohibition that was implicit in Belgian law, there was no need to amend the Constitution, which addressed the question of the equality of all citizens only in general terms. The Constitution allowed the three communities to conclude treaties independently in areas of their own competence, such as cultural exchange or education, but the question of whether economic and social regions had such competence was currently under debate within the European Community. Prostitution was considered a legitimate occupation when it was practised by women who were properly innoculated and were of age. However, it was felt that the State should discourage the practice, and special measures would be taken to deal with the problem of trafficking in women and prostitution, to which immigrant women were particularly vulnerable.

Right to life, liberty and security of the person and treatment of prisoners and other detainees

408. In connection with those issues, members wished to be informed about the current situation in respect of the death penalty and the ratification of the Second Optional Protocol; rules and regulations governing the use of firearms by the police and security forces; details concerning the Protection of Young Persons Act 1965; detention in institutions other than prisons and for reasons other than crimes; the maximum length of pretrial detention; remedies available to persons claiming wrongful detention and their effectiveness; measures to prevent cruel, inhuman or degrading treatment of prisoners and detainees; procedures for the review of prison conditions; and compliance with United Nations Standard Minimum Rules for the Treatment of Prisoners and the availability of relevant regulations and directives to prisoners in all official languages. In addition, members wished to know whether the Government was addressing the affirmative aspects of the right to life, such as the right to health, the elimination of epidemics and pollution-related issues; what was Belgium's position regarding organ transplants from aborted foetuses; whether detainees had the right to ask for a lawyer as soon as they were arrested; whether medical examinations were carried out by independent doctors; how solitary confinement was practised; and whether those held in

transit zones had the right to appeal their detention, as provided for under article 9, paragraph 4, of the Covenant.

409. In his reply, the representative said that a bill had been reintroduced before the legislature expressly to abolish the death penalty, except for the most serious military crimes in time of war. A law was also being drafted to adopt the Second Optional Protocol to the Covenant and the Sixth Protocol to the European Convention on Human Rights. The use of firearms was governed by law, with absolute necessity being the basic principle governing any use of firearms. A bill had been introduced in June 1991 to coordinate the functions of the various police forces and to reform existing laws by providing uniform regulations on the use of force and firearms. A bill proposing reforms in the Protection of Young Persons Act of 1965 had been drawn up including a measure restricting the application of the Act to minors over 14 years of age charged with a crime punishable by one year's imprisonment and providing for a hearing by a judge for such minors. A new law on the protection of the mentally ill made it impossible for a person to be hospitalized or held for observation without a court order. The new Act on pretrial detention of 1990 guaranteed the individual's basic rights while at the same time improving the administration of justice. The minimum sentence for crimes warranting pretrial detention had been raised from six months to one year's imprisonment, but there was no definite time-limit for pretrial detention. Guarantees of individual rights had also been improved through such measures as the introduction of a more rigorous definition of conditions of arrest and more detailed arrest and interrogation records, providing free access to a lawyer and according the right to a public hearing after six months of detention. About 60 claims a year involving compensation for wrongful detention were brought before the Minister of Justice, about half of which were granted. A detainee could, at his own initiative, contact his family in writing or by telephone immediately following arrest, unless he was held incommunicado, in which case he could have immediate access to a lawyer. There had been no complaints of torture during the reporting period, although some complaints of ill-treatment had been made about maximum security prisons and solitary confinement. Such practices might be defensible on the grounds that restrictive measures had to be taken where circumstances and prudence so required and that dangerous prisoners had to be kept separate from others. That matter was currently before a court of appeal. A detainee could lodge complaints about mistreatment to the authorities of the penitentiary system, the Minister of Justice and courts with summary jurisdiction. A monitoring committee would be making periodic visits to prisons after ratification by Belgium of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United Nations Standard Minimum Rules for the Treatment of Prisoners, which were available in French and Dutch to all persons within the penitentiary system, were generally respected.

410. The rules governing the conditions of preventive detention had recently been changed. In general terms, the grounds for detention were reviewed within five days of detention. Detainees could lodge an appeal at each phase of their detention and had the right to request a lawyer. The affiliation of doctors who performed medical examinations of detainees had been criticized and corrective steps were being taken. Relevant information concerning organ transplants from aborted foetuses would be made available to the Committee at a later date.

Freedom of movement and expulsion of aliens

411. In relation to those issues, members asked for information on the status of the Royal Decree of 7 May 1985, prohibiting certain aliens from residing or establishing themselves in some communes, and of the appeal lodged against it and concerning the conditions and status of persons received at Centre 127 at Zaventem airport. They also wished to know whether an appeal against an expulsion order had suspensive effect.

412. In his response, the representative acknowledged that the restrictions placed in areas where immigrants could settle were highly contentious and possibly inconsistent with the provisions of the Covenant. The concerns expressed by members of the Committee would be passed on to his Government, which was considering the adoption of new measures. There were several categories of expulsion of aliens, depending on their status. Appeals had a suspensive effect on the expulsion orders and all remedies were based on the provisions of the European Convention and the Covenant. New rules governing the expulsion of aliens had recently been introduced, following the decision of the European Court of Justice that imprisonment and subsequent expulsion of aliens constituted double jeopardy. Asylum-seekers without valid travel documents could no longer enter Belgium as of right, but were confined to a reception centre at the transit zones of the airport while their requests were being processed. Notwithstanding the finding of the Committee against Torture that the transit zones were detention areas, the Court of Appeal in Belgium had recently reaffirmed its ruling that such confinement, for periods under two months, did not constitute administrative or penal detention.

Right to a fair trial

413. In connection with that issue, members of the Committee wished to know what the procedures were for the appointment and removal of members of the judiciary; how the Bar was organized and how it functioned; and whether legal assistance was available to criminal defendants and, if so, how it operated.

414. In his reply, the representative said that appointments of judges were made by the King on the advice of an elected body and the competent branch of the judiciary. Judges were appointed for life and could be removed only with their own consent or by decision of the Court of Appeal. The legal profession in Belgium was independent and private. Lawyers had to be Belgians or nationals of a State member of the European Community. A council was elected annually by each Bar Association and also at the national level, to safeguard the traditions and professional interests of lawyers. Criminal defendants were entitled to ask for the assistance of a lawyer and the Government intended to provide assistance through social assistance committees and through subsidies to lawyers who did *pro bono* work for indigent clients.

Freedom of expression, assembly and association

415. With regard to those issues, members requested information concerning restrictions pertaining to the freedom of expression and examples of the "serious reasons" that had been accepted by the Labour Court for dismissing trade-union representatives. Members also wished to know whether the State had a monopoly on television broadcasting; who exercised control over the media; what the criteria were for determining access by professional

associations to the National Labour Council; whether legislation existed to protect such right of access and what action had been taken to implement ILO recommendations in that regard; and whether the provision of the Belgian Constitution restricting outdoor meetings was compatible with article 21 of the Covenant.

416. In his reply, the representative said that, as a general principle, preventive action to restrict freedom of expression was not permissible under Belgian law. However, a posteriori judicial proceedings could be taken under the civil or criminal codes to redress damage to a person's reputation. While censorship of the press and other media was prohibited by the Constitution, there had been petitions to prevent the publication or broadcasting of damaging materials. In such cases magistrates had sought to strike a balance between all interested parties without impeding the freedom of expression, and granted petitions only where the rights of a third party had been manifestly violated. Public television channels in both Flemish and French were State-owned and operated but several French and Flemish private channels were also in operation.

417. Concerning the dismissal of trade-union representatives, the representative said that "serious reasons" were defined by law as any serious transgression that immediately and definitely rendered future collaboration between the employer and employee impossible. Trade-union representatives were protected against dismissal for reasons related to their official status and the "serious reasons" could not be linked to the existence or discharge of official duties as trade-union representatives.

Protection of the family and child, right to participate in the conduct of public affairs

418. In relation to those issues, members asked for information on legislation regarding divorce and custody of children and concerning the law and practice relating to the employment of minors. Members also wished to know what the differences were between the status of legitimate and natural children and whether the existence of the monarchy impeded the application of the principle of equal access to public office by providing privileged treatment for the aristocracy.

419. In his reply, the representative said that the custody of children in the event of a divorce or separation was determined either by agreement or by court order, which was subject to review. In determining custody, the best interests of the child were the paramount factor. Where custody was awarded to one parent, the other retained the right to maintain personal relations with the child. All such rights were subject to judicial control if the child's physical or mental health was considered to be in jeopardy. Children who had not completed their compulsory schooling were prohibited from taking up employment except in areas related to their education and training. Work in the mining industry and activities that might jeopardize or threaten the health or morals of minors under 19 were also prohibited. The fact that a few public functions were reserved for the royal family did not interfere with full access by all citizens to public employment.

Concluding observations by individual members

420. Members of the Committee commended the State party on its excellent report, which contained detailed information on the law and practice relating to the implementation of the Covenant's provisions. They also expressed appreciation to the representative of the State party for his efforts to respond fully to the Committee's questions, praised the competence of the delegation and considered that the dialogue had been fruitful and constructive.

421. While recognizing the existence of a sound mechanism for the protection of human rights and the difficulties experienced by Belgium, members voiced some continuing concerns in such areas as the jurisdictional problem between the national and community governments; discrimination against aliens and immigrants; the lack of an overall judicial authority to deal with preventive detention; the practice of detention by the police; and the cultural bias against women. They also urged the State party to bring domestic law into line with the provisions of the Covenant, in particular articles 14, 21 and 26, and to review the need for its reservations to the Covenant.

422. The representative of the State party said he would report the various comments of the Committee to his Government and hoped that the next periodic report would show that the Committee's expectations had been met.

423. In concluding the consideration of the second periodic report of Belgium, the Chairman expressed satisfaction over the human rights situation in Belgium.

Comments of the Committee

424. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

425. In accordance with that decision, at its 1148th meeting, held on 10 April 1992, the Committee adopted the following comments.

Introduction

426. The Committee commends the State party on its excellent report, which contains detailed information on law and practice relating to the implementation of the Covenant's provisions subsequent to the consideration of the initial report. The Committee appreciates the comprehensiveness of the report, which is in conformity with the Committee's guidelines. In particular, the Committee is grateful for both the oral and written responses provided by the State party representative. The Committee also appreciates the high competence of the delegation and considers that the dialogue with the State party was fruitful and constructive.

1. Positive aspects

427. The Committee notes with satisfaction the changes in law and in practice during the period under review, in particular the several decisions of the Court of Cassation affirming the applicability of certain provisions of the Covenant; the law on economic reorientation prohibiting any discrimination based on sex; the law abolishing all discrimination between children born in and out of wedlock; the draft law permitting immediate communication between the accused and his lawyer; the bill proposing to abolish the death penalty; and the planned accession to the Second Optional Protocol to the Covenant.

2. Factors and difficulties impeding the application of the Covenant

428. The Committee notes some of the major difficulties experienced by Belgium, such as the centrifugal character of Belgian federalism, the bipolar nature of the legal system and the language differences among the population. The complexity of the Belgian legal framework seems to have impeded a direct reference to the Covenant to a certain extent.

3. Principal subjects of concern

429. Although noting the direct applicability of several provisions of the Covenant, which form part of Belgian domestic law, the Committee is concerned about the difference between civil rights enjoyed by citizens and those enjoyed by aliens, which may lead to discrimination against aliens. Other areas of concern include the scope of interpretation given to article 6 of the Covenant; the adequacy of monitoring pretrial detention as well as the impartiality of the authorities who examine those arrested; the adequacy of remedies for wrongful detention; the adequacy of information on freedom of expression, especially in relation to television broadcasting; and arrangements as to freedom of assembly in open air.

4. Suggestions and recommendations

430. The Committee recommends to the State party to reflect more adequately in internal administrative practice the provisions of the Covenant that are not reflected in the European Convention for the Protection of Human Rights and Fundamental Freedoms (e.g. arts. 25, 26 and 27), and to ensure that the laws regarding restrictions on freedom of expression and assembly are compatible with those provided for in the Covenant. The Committee also recommends that the State party further improve the effectiveness of the protection granted to minority rights at the communal level. The Committee further recommends that the State party reconsider its reservations so as to withdraw as many as possible.

YUGOSLAVIA

431. The Committee considered the third periodic report of Yugoslavia (CCPR/C/52/Add.9) at its 1144th to 1147th meetings, on 8 and 9 April 1992 (CCPR/C/SR.1144-1147). (For the composition of the delegation, see annex VIII.)

432. The report was introduced by the representative of the State party, who referred to important changes bearing on human rights that had occurred since the consideration of the second periodic report. In that connection, he said that fundamental changes had been made to the constitutional and legal systems of the Yugoslav Federation conducive to the introduction of a multiparty political system and a market economy and to the full implementation of international human rights standards.

433. The authorities of the Republics of Slovenia and Croatia had violated the constitutional provisions relating to the federal structure of the State and the modalities for amending the Constitution through their unilateral decisions to proclaim independence and secede from Yugoslavia. Both the Constitutional Court of Yugoslavia and the Government had declared those acts illegal and unlawful and their consequences invalid, while reaffirming the right of each nation to self-determination provided that it was not contrary to the principles of democracy. Those acts of secession ignored two particularly sensitive questions: the rights of other peoples to self-determination, which were threatened by such acts, and the status of the borders of the republics concerned. The population of Yugoslavia was indeed multinational in composition and the secession of certain republics could cause members of the same constituent nation, currently citizens of a single State, to become citizens of different States.

434. The adoption of unconstitutional acts by secessionist republics and the upsurge of nationalism throughout Yugoslavia had led to outbreaks of national and religious hatred and armed conflicts. The armed conflict in Slovenia, caused by the forcible takeover by the Slovenian authorities of Yugoslav border posts and customs services, and the war in Croatia, provoked by the persecution of Serbs, had demonstrated that the use of force and recourse to unconstitutional acts led only to severe human losses and damage to property, while widening the gap between the different peoples and increasing their mutual distrust. Furthermore, the withdrawal of Slovenian, Croatian and Macedonian representatives had led to the paralysis of the federal legislative bodies, preventing the adoption of constitutional amendments and of other provisions that required the approval of all republics. The Republics of Montenegro and Serbia had been trying to redefine a new federation of Yugoslavia, open to all other Yugoslav peoples and republics wishing to accede to it. Alongside the Conference on Yugoslavia, preparations were under way to hold new federal elections and adopt a new constitution.

435. Although the rights of national minorities had been adversely affected by the deterioration of the situation in the country, none of the extensive rights provided to minorities under the 1974 Constitution had been reduced. In violation of the Constitutions of Yugoslavia and the Republic of Serbia, ethnic Albanians had declared the so-called Republic of Kosovo. Consequently, the Assembly of the Socialist Autonomous Province of Kosovo had been suspended and other measures adopted to protect the territorial integrity and

constitutional order of the Republic of Serbia. The implementation of those measures had resulted in abuses and those found guilty had been brought to justice. The unsatisfactory situation in Kosovo could be resolved only if two conditions were fulfilled, namely, the holding of democratic and multiparty parliamentary elections in that province and the recognition of the sovereignty and integrity of the Republic of Serbia as the State in which ethnic Albanians lived. In accordance with existing international instruments, the Government believed that national minorities did not have the right to self-determination and secession and strongly opposed the establishment of a new Albanian State.

Constitutional and legal framework within which the Covenant is implemented, state of emergency and self-determination

436. With regard to those issues, members of the Committee wished to receive further information on the effect of the current crisis on the constitutional order in Yugoslavia and on the discharge of Yugoslavia's international obligations to respect and ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant; the status of the amendments to the federal Constitution adopted since November 1988; developments regarding the adoption of new constitutions for the so-called "federal units"; developments relating to the observance of article 1 of the Covenant, in particular in view of the statement in the report that the adoption of amendments establishing federal units as sovereign States had implied that mutual relations in Yugoslavia had to proceed along new lines and had changed its internationally recognized status; and on the new legal system that had come into being as a result of such redistribution of power. Clarification was also requested of the rights that had actually been derogated from during the recent events; in particular, it was asked why Yugoslavia had not declared a state of emergency; why the notification procedure laid down in article 4, paragraph 3, of the Covenant had not been followed; what safeguards and remedies were available to individuals affected by the recent military operations claiming violations of the rights referred to in article 4, paragraph 2, of the Covenant; and what had been the impact of the state of emergency in Kosovo on the exercise of the rights guaranteed under the Covenant, in particular with regard to safeguards and remedies available to individuals. Members further inquired whether the Government intended to ratify the First Optional Protocol to the Covenant, which it had signed on 14 March 1990.

437. In addition, it was noted that, while the Covenant applied to the entire territory of Yugoslavia, the federal Government could protect civil and political rights only in Serbia and Montenegro. The Government was, however, to be considered responsible for the actions of its troops wherever they operated. Furthermore, information was requested concerning the events that had led to the Government resorting to force and to the war-type situation characterized by sieges and violence against civilians; the Government's view on the de jure and de facto scope of the application of the Covenant under the current rapidly evolving situation in the country; the status of the Covenant in the republics that had chosen to leave the Federation and establish independent States; and the new draft Constitution which was being drawn up to govern those republics that wished to remain in the Federation. Clarification was also requested of a statement in the report which seemed to ascribe the worsening human rights situation to political pluralism.

438. Lastly, clarification was requested of the statement in the report that the issue of the exercise of the right to self-determination and to secession concerned all the nations within the Socialist Federal Republic of Yugoslavia and that that right could not be regulated unilaterally by the assemblies of the federal units. In that regard, it was asked whether the Constitution actually permitted the republics to assert their right to self-determination. Further information was also requested on efforts undertaken by the autonomous provinces of Kosovo and Vojvodina to exercise the right to self-determination and on the envisaged status of those autonomous provinces under the new Constitution. It was also asked how the measures taken against Albanians in Kosovo during the state of emergency, such as the dismissal of teachers and lawyers and the closure of Albanian schools, could be reconciled with the provisions of article 4, paragraph 1, of the Covenant.

439. In his reply, the representative of the State party emphasized that the Yugoslav Government was no longer in control of the whole territory of the country. Since under the Constitution and international law, peoples and nations had a right to self-determination, including the right of secession, the Government was in the process of drafting rules for secession that would lay down the mutual rights and obligations of the republics and central Government. With regard to the specific situation in certain republics, he explained that in June 1991 the Republic of Slovenia had tried violently and unilaterally to secede by taking over frontiers and customs posts. Yugoslav troops had been withdrawn from Slovenia by a presidential decision that was later deemed unconstitutional by the Constitutional Court. The crisis in Croatia had been precipitated by the attempt of Croatian authorities to adopt a new constitution without the consent of the Republic's Serbian population. Acts of discrimination against Serbs had escalated into attacks by the Croatian army and paramilitary groups against Serbian villages. Yugoslav army units had then been ordered to intervene between the two conflicting sides and they had, in turn, been attacked by the Croatian military, which had proceeded to commit atrocities verging on genocide. The question of Bosnia and Herzegovina was critical since the Republic was made up of Muslims, Croats and Serbs, all with conflicting wishes.

440. Although the Government did not recognize the secession of the breakaway republics, it was endeavouring to cooperate with them in finding a solution to problems of day-to-day existence, which included human rights issues. Given that the secessionist republics had stated that they intended to be bound by international law, there should not be any difficulty in ensuring the continued application of the Covenant in territories outside the de facto control of the federal Government. The most obvious area of difficulty was, however, that of minority rights.

441. Some of the amendments to the 1988 Constitution had been accepted by all the constituent republics. Fifty amendments had, however, not been adopted, and since there were no representatives of Croatia, Slovenia, Macedonia or Bosnia and Herzegovina in the current national Parliament, they could not now be expected to be adopted. A new draft constitution had recently been prepared and would be open for ratification by all republics wishing to remain in the Yugoslav Federation. The Government had submitted to Parliament a proposal to ratify the First Optional Protocol and to make the declaration provided for in article 41 of the Covenant.

442. A state of emergency had been declared in Kosovo in 1981 and lifted in 1989. The Secretary-General had been duly informed in both cases. While judicial remedies offered the best protection for the exercise of the rights guaranteed under the Covenant, it was not always possible, in a climate of interethnic and interreligious hatred, to prosecute all individuals suspected of crimes. All international obligations of Yugoslavia with regard to ethnic minorities and human rights would be respected under the new Constitution, but the status of autonomous provinces had to be different from that of the 1974 Constitution since the rights granted to those provinces had been widely abused in the past.

Right to life, liberty and security of the person, treatment of prisoners and other persons deprived of their liberty and right to a fair trial

443. In connection with those issues, members of the Committee wished to know what had been the nature and extent of the "flagrant violations of basic human rights" that had occurred during military operations; what concrete measures were being taken to ensure strict compliance with articles 6 and 7 of the Covenant; whether investigations had been carried out in respect of violations, particularly regarding cases of torture, disappearances and killings during military operations and action to punish those found guilty and to avoid the recurrence of such acts; what complaints had been made concerning human rights violations by the army and paramilitary groups and what had been done to investigate those cases and to punish the culprits; what arrangements had been made for the efficient supervision of any places of detention and what procedures existed for submitting and investigating complaints; whether there were any independent and impartial procedures under which complaints could be made and investigated about the ill-treatment of individuals by the police, members of the security forces or prison officials; and what concrete measures had been taken since the examination of the second periodic report to strengthen judicial independence and how the current crisis had affected the situation.

444. In addition, although the investigation of atrocities committed by the Serbian army and paramilitary units was welcomed, it was felt that the lack of proper government control over the army had contributed to the deteriorating situation and helped to accelerate the disintegration of the country. In that regard, information was requested on the implementation of articles 6 and 7 of the Covenant in the parts of the breakaway territories under the control of the Yugoslav army; on the orders that had been given to the army as to the military operations to be conducted; and, in general, on any measures envisaged to keep the army under full control. It was also asked how many civilians had been killed during the armed conflict; whether there were any reliable statistics on summary executions and disappearances; and for what crimes the death penalty could be imposed. With regard to articles 9 and 14 of the Covenant, it was inquired what the maximum length of detention pending trial was and whether measures had been taken to strengthen the independence of the judiciary.

445. In his reply, the representative of the State party explained that efforts had been made by the federal army to safeguard the rights of individuals. Many instances had, however, been documented of genocidal acts committed by Croatian military and paramilitary units against the Serbian population in Croatia. Admittedly, the Yugoslav army had not always been able

to control its own units, with the result that there had been some regrettable incidents involving destruction of villages, killings and acts of cruelty. However, although the Yugoslav army had committed crimes against humanitarian law, it had not carried out any summary executions. He agreed that those responsible had to be punished and that a recurrence of such crimes had to be prevented. Although it was difficult for the Government to control the army's activities, given the latter's state of disintegration, it bore responsibility for the army's action and was taking steps accordingly. The Government was thus prepared to punish all those responsible for crimes against civilians. A special commission had recently been established to investigate all reported violations of international humanitarian law, regardless of the nationality of the victims. Moreover, 30 members of the army or paramilitary groups were currently in prison for human rights violations and many other cases were under investigation.

446. Although the death penalty had not been abolished in Yugoslavia, it had been applied in a very limited way. There had been no executions in Serbia for 30 years and it was hoped that the new Constitution would abolish capital punishment altogether. Proposals had been made to authorize capital punishment only for the gravest forms of criminal acts perpetrated during a state of war or immediate danger of war, and to limit its application in other circumstances by requiring the unanimity of a panel of seven judges in passing the death sentence.

447. In the territory under federal Government control all interested groups, including non-governmental organizations and the International Committee of the Red Cross, had been invited to inspect places of detention and had offered advice and assistance, especially concerning prisoner exchange. An impartial procedure for handling complaints of ill-treatment existed through the courts and the special investigation committee. Yugoslavia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its national legislation contained adequate protection against such practices. Under article 16 of the Constitution of the Republic of Serbia, a person suspected of having committed a criminal offence could be detained and held in confinement on the basis of an order issued by a competent court of law only when such detention was indispensable for the conduct of criminal proceedings or for reasons of public safety. The length of detention had to be kept as short as possible. The independence of the judiciary had been strengthened by amendments to the federal Constitution and also by the new constitutional law in the various republics. The practice of re-electing judges had been abolished and judges were now elected to permanent posts.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, right to participate in the conduct of public affairs, non-discrimination, equality of the sexes and rights of persons belonging to minorities

448. With regard to those issues, members of the Committee wished to receive information on any special limitations and restrictions on the exercise of freedom of movement and expulsion of aliens, the right to privacy, freedom of religion, expression, assembly and association and the right to participate in the conduct of public affairs and on the compatibility of those limitations and restrictions with the relevant provisions of the Covenant; on controls

exercised under the present circumstances on freedom of the press and the mass media, including possible censorship; on measures adopted to eliminate the possibility of repression and discrimination based on ethnic, religious or political affiliation, which reportedly were permitted in the legal system of certain republics; on the situation of ethnic, religious and linguistic minorities in the various republics; and on measures taken to promote the enjoyment of minority rights under article 27 of the Covenant.

449. In addition, further information was requested on the procedures to be followed by a national who wished to leave the country and on the conditions for obtaining a passport. Concern was expressed over the situation of the civilian population in areas of conflict, particularly women, children and the elderly, and the situation of thousands of persons who had been obliged to abandon their homes and were prevented from returning. In that regard, it was asked whether measures were contemplated by the Government to facilitate the return of people who had sought temporary refuge elsewhere in the country or abroad, and to find solutions in cases where homes had been taken from their rightful owners. Further information was also sought on complaints brought by the Union of Independent Trade Unions of Kosovo to the ILO Committee of Experts on the Application of Conventions and Recommendations. Those complaints concerned the alleged refusal by the federal Government in February 1991 to register Kosovo unions or to admit those unions to the collective bargaining process, as well as the unfair dismissal of union members on the grounds that they resorted to industrial action and refused to join Serbian trade unions.

450. Furthermore, information was requested on the closure of Albanian-language schools and the university, the banning of the Albanian-language newspapers and Albanian radio and television stations and on other measures adopted against Albanian cultural institutions. Clarification was also requested of measures taken to secure participation of members of the Albanian minority in the public affairs of Kosovo. Members also wished to know what measures were being taken to reduce tension between religious communities; whether the proportion of minorities conscripted into the Serbian army was higher than their percentage in the general population; what restrictions, if any, were envisaged in the draft law on education in the Republic of Serbia with regard to the teaching of minority languages, particularly Albanian and Hungarian; and what the situation was of the Hungarian minority in the Autonomous Province of Vojvodina.

451. In his reply, the representative of the State party said that the new provisions in the constitutions of the republics placed no restrictions on freedom of movement, freedom of religion or freedom of assembly and association and were fully compatible with international standards. A passport could be refused only because of obligations regarding families or the courts or on grounds of national security. For obvious reasons, however, the movement of persons had been restricted during the armed conflict in areas of direct hostilities and further obstacles had been created by the new international frontiers between the republics. All displaced persons had the right to return to their homes and, in the territory of Krajina in Croatia, United Nations peace-keeping troops would provide a guarantee of safe return.

452. The right to privacy was guaranteed in almost all the new constitutions of the republics. Articles 18 to 21 of the Constitution of the Republic of

Serbia contained provisions guaranteeing the right to privacy, the confidentiality of personal correspondence and personal data and the inviolability of the home. There was no censorship of the mass media and any obstruction to the dissemination of information was prohibited unless it could be established that such information was intended to undermine the established constitutional order, to foment violence or racial hatred or to serve other unconstitutional ends. The use of State media by the ruling party was, however, an intricate issue, and in some republics it had been decided that the editorial board and management of such organs would be elected by parliament.

453. Legal provisions existed to protect children during armed conflict and Yugoslavia was bound by the provisions of various international conventions. Although efforts had been made to evacuate children and provide them with temporary homes, many children had fallen victim to the armed conflict and a high percentage of refugees were children.

454. The right to participate in the conduct of public affairs was fully implemented in Yugoslavia, with the exception of Kosovo where the majority of the Albanian population did not participate in public affairs in the province. That lack of participation was due, however, not to any limitation of their right, but to a deliberate boycott policy. In consequence, it had been necessary to suspend the Parliament of Kosovo and it was now up to the Albanians to take part in elections of the local administrative bodies, to be held later in 1992. Since the Albanian minorities did not recognize the authority of the State, official circles in the Serbian and Yugoslav Governments declined to make any efforts on behalf of the Albanians. The Union of Independent Trade Unions of Kosovo, which consisted solely of ethnic Albanians, had begun a dialogue with the Serbian Government concerning the issue of the dismissal of workers. The Albanian minority had also objected to certain school programmes on the ground that not enough importance had been attached to Albanian history and culture. The number of pupils in schools had decreased slightly and the Albanian-language newspaper as well as several schools had been closed owing the State's financial position. Although the Serbian Government had proposed negotiations with a view to solving all the outstanding problems, representatives of the Albanian minority had stated that they would participate only if the Serbian Government recognized the Republic of Kosovo, which the Serbian Government was unwilling to do.

455. Turning to other questions, the representative explained that an investigation had also been conducted on the question of conscription and had produced no evidence to substantiate claims that a disproportionate number of conscripts had been recruited from among the Hungarian minority. The Hungarian language was widely used in all areas of public life. The new Serbian Constitution recognized Vojvodina as an autonomous province and the rights of all minorities would continue to be respected. The Government had made great efforts in recent years to create an atmosphere of tolerance and cooperation between different ethnic and religious groups, at a time when the interethnic situation was deteriorating.

Concluding observations by individual members

456. Members of the Committee expressed their appreciation of the fact that, despite the serious events that had occurred in the country, the federal

Government had been able to cooperate with the Committee and to submit a report, albeit late, in response to the decision adopted by the Committee on 4 November 1991. However, the report did not cover the whole period since 30 May 1983, the date of submission of the second periodic report, and did not deal fully enough with the problems encountered by the State party in applying the provisions of the Covenant in practice. The dialogue between the Committee and the representatives of the State party had, to a certain extent, provided additional information on the obstacles to the effective application of the Covenant and highlighted certain efforts being made to improve the legal and regulatory framework within which the Covenant was being applied. In that regard, it was noted that a commission had been set up to inquire into allegations of genocide and violation of human rights during the armed conflict.

457. Members regretted that the present crisis prevented the Committee from supervising the application of the Covenant throughout the territory of the State party. With reference to article 1 of the Covenant, they regretted that no procedure had been established under domestic law for implementation of the right to secede recognized in the federal Constitution, which would have enabled the crisis to be settled peacefully. Concern was also expressed about the excessive steps taken under the state of emergency proclaimed in the province of Kosovo to limit the rights and freedoms guaranteed by the Covenant.

458. Members expressed their gravest concern with regard to the atrocities committed during the interethnic conflicts and the many violations of human rights protected by the Covenant, especially those referred to in article 4, paragraph 2, of the Covenant. The many reported cases of summary or arbitrary execution, forced or involuntary disappearances, torture, rape and pillage perpetrated by members of the federal army were particularly regretted. Noting that paramilitary groups and the militia had also been guilty of similar abuses, members also expressed regret at the extremely low number of inquiries into these allegations, the failure to take measures to punish those guilty and prevent any recurrence of such acts, which had left those responsible to enjoy effective impunity. Concern was also expressed over conditions in detention centres; the alarming situation of the civilian population, particularly women, children and the elderly, in areas of conflict; the situation of displaced persons; the extent of the restrictions and limitations placed on the exercise of freedom of movement, the right to privacy, freedom of religion, expression, assembly and association and the right to take part in the conduct of public affairs; the deterioration in the situation of ethnic, religious and linguistic minorities, particularly those of Albanian and Hungarian origin; and the situation of population groups which had become de facto minorities as a result of recent interethnic conflicts.

459. The representative of the State party assured the Committee that its comments would be duly conveyed to his Government, which intended to abide by all provisions of the Covenant and to investigate the excesses of all military units. The Government did not deny the right of the nations of Yugoslavia to self-determination and would not oppose its lawful exercise.

460. In concluding the consideration of the third periodic report of Yugoslavia, the Chairman thanked the delegation for having engaged in a dialogue with the Committee. There was still some doubt as to whether the

protection of human rights had been a high priority for the Government in its recent actions. Clearly, efforts had to be made to investigate human rights violations, to punish those responsible and to prevent their recurrence.

Comments of the Committee

461. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

462. In accordance with that decision, at its 1148th meeting, held on 10 April 1992, the Committee adopted the following comments.

1. Introduction and positive developments

463. The Committee thanks the State party through its representative for the report it submitted, albeit late, in response to the decision adopted by the Committee on 4 November 1991. The Committee appreciates the fact that, despite the serious events that have occurred in the country, the federal Government has been able to cooperate with the Committee and to present and discuss its report. The Committee takes note of the information contained in the report on the present constitutional and legal situation. It nevertheless regrets the fact that the report does not cover the whole period since 30 May 1983, the date of the submission of the second periodic report, and that it does not deal fully enough with the problems encountered by the State party in applying the provisions of the Covenant in practice. However, the oral dialogue established in the Committee meant that it was to some extent possible to obtain additional information on the obstacles to the effective application of the Covenant and to highlight certain efforts being made to improve the legal and regulatory framework within which the Covenant was being applied. The Committee noted that a commission had been set up to inquire into allegations of genocide and violation of human rights during the armed conflicts.

2. Factors and difficulties impeding the application of the Covenant

464. The Committee notes that difficulties had arisen in the province of Kosovo, which had led to the proclamation of several successive states of emergency. More recently, the uncontrolled break-up of the State party's institutions has degenerated into violent interethnic conflicts, leading to widespread violations of most of the human rights safeguarded by the Covenant. As a result, a peace-keeping operation has been set up under the cease-fire negotiated under the auspices of the United Nations.

3. Principal subjects of concern

465. The Committee notes that as things stand, the present crisis prevents it from supervising the application of the Covenant throughout the territory of the State party; because of the federal State's loss of control in a growing

number of republics, little information has been communicated to the Committee on the application of the Covenant in those areas. The Committee stresses the importance of continuing to implement the Covenant in those republics. With reference to article 1 of the Covenant, the Committee regrets the fact that there was no procedure under domestic law for implementation of the right to secede recognized in the federal Constitution, which would have enabled the crisis to be settled peacefully. The Committee also regrets the fact that, under the state of emergency proclaimed in the province of Kosovo, excessive steps have been taken to limit the rights and freedoms guaranteed by the Covenant.

466. The Committee expresses its gravest concern with regard to the atrocities committed during the interethnic conflicts. It is disturbed by the many violations of human rights protected by the Covenant, especially those referred to in article 4, paragraph 2, of the Covenant, which are to be safeguarded whatever the circumstances (right to life and prohibition of torture in particular). The Committee greatly regrets the many cases of summary or arbitrary execution, forced or involuntary disappearance, torture, rape and pillage committed by members of the federal army. Paramilitary groups and militias have also been guilty of similar abuses. The Committee regrets the extremely low number of inquiries made into these violations, the failure to take measures to punish the guilty and prevent any recurrence of such acts, and the consequent impunity of those responsible.

467. The Committee also expresses its concern over conditions in detention centres, the situation of the civilian population, particularly women, children and the elderly, in areas of conflict, and the situation of displaced persons. The Committee also regrets the extent of the restrictions and limitations placed on the exercise of the freedom of movement, the right to protection of privacy, freedom of religion, expression, assembly and association and the right to take part in the conduct of public affairs.

468. The Committee also expresses its concern over the deterioration in the situation of ethnic, religious and linguistic minorities, particularly those of Albanian and Hungarian origin, and the population groups which have become de facto minorities as a result of recent interethnic conflicts.

4. Suggestions and recommendations

469. In view of the serious situation prevailing in the State party, the Committee recommends that the Government take all necessary measures to stop violations of human rights, particularly those relating to the right to life and the prohibition of torture. These measures should include re-establishment of control over the army, dissolution of paramilitary militias and groups, punishment of those guilty of violations and adoption of measures to prevent a recurrence of such abuses. The Committee also recommends full application of article 27 of the Covenant, which recognizes the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language.

REPUBLIC OF KOREA

470. The Committee considered the initial report of the Republic of Korea (CCPR/C/68/Add.1) at its 1150th, 1151st and 1154th meetings, held on 13, 14 and 15 July 1992 (CCPR/C/SR.1150, SR.1151 and SR.1154). (For the composition of the delegation, see annex VIII.)

471. The report was introduced by the representative of the State party who explained that, subsequent to the revision of the Constitution on 29 October 1987, institutional measures had been taken to embody genuinely democratic principles and to enhance the protection of human rights. The Constitution, based on the Declaration for Democracy of 29 June 1987, represented a turning-point in the struggle for democracy in the Republic of Korea and provided for the election of the President of the Republic by direct popular vote. It had strengthened the power of the National Assembly vis-à-vis the administration and improved the procedure for appointing judges. A Constitutional Court had been established to review the constitutionality of laws and rule on petitions by individuals seeking redress of human rights infringements. Improvements had also been made in the penal administration by the institution of legal aid programmes and the abolition of the death penalty for 15 types of crime. Furthermore, amendments to the Penal Code and the Code of Penal Procedure to reinforce the principle of nullum crimen sine lege were being finalized.

472. Accession to the Covenant had played an important role in the overall strengthening of human rights and fundamental freedoms in the Republic of Korea. International human rights instruments had been translated into and published in the Korean language, and measures had been taken to publicize the Covenant among law enforcement officials. Provisions of the Covenant had already been applied by the Constitutional Court and the Government was currently undertaking a review of its position regarding the reservations it had made in acceding to the Covenant. The admission of the Republic of Korea to membership of the United Nations in September 1991 had given additional momentum to the Government's efforts to promote human rights in accordance with the Charter of the United Nations. Furthermore, in becoming a full-fledged member of ILO in December 1991, the Republic of Korea had strongly endorsed international endeavours to ensure the protection of fundamental trade union rights and was currently considering acceding to various ILO Conventions.

473. The representative of the State party further emphasized that one of the most important factors affecting the implementation of the Covenant in the Republic of Korea was the tense situation resulting from the division of the Korean peninsula. It was not until 1991, following the end of the cold war, that the two sides had succeeded in engaging in a serious dialogue and begun to seek a way to reunify the nation peacefully. The Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation had subsequently been concluded in February 1992 and had led to a series of regular consultations that were expected to narrow the gap between the two countries in every field. Nevertheless, it was only natural that a country that had been nearly overthrown by invasion should feel unable to relax its guard against further aggression or subversion of its liberal democratic system. Accordingly, the National Security Law had been adopted and continued to operate to protect the security and the integrity of the system. In spite of

the call in some quarters for its abolition, it was the national consensus that the National Security Law should be maintained until the signature of a peace agreement between the two countries. In the meantime, however, the Government remained determined to eliminate any infringement of human rights resulting from the application of that law beyond restrictions permitted by the Constitution and the Covenant.

474. With reference to article 1 of the Covenant, members of the Committee sought clarification of the position of the Republic of Korea, given the movement towards reunification, regarding the right of peoples to self-determination as well as their entitlement to democracy and to choose their own economic, social, political and cultural system.

475. With regard to the constitutional and legal framework within which the Covenant was implemented, members of the Committee wished to receive further information on the status of the Covenant in domestic law. Observing that the Covenant had the same force as any ordinary domestic law, members wondered how a conflict between provisions of the Covenant and subsequent domestic legislation would be resolved. It was asked whether provisions of the Covenant had ever been invoked before the courts and whether a national institution had been established to deal with matters relating to human rights. More generally, with regard to remedies available to individuals, it was asked what effect petitions filed by individuals would have, whether an appeal could be lodged against a decision handed down as a result of a petition, what was the procedure for bringing a case before the Supreme Court and whether there were administrative courts. Clarification was requested of the meaning of article 37 of the Constitution, according to which freedoms and the rights of citizens would not be neglected on the grounds that they were not enumerated in the Constitution. Information was requested on the manner in which the Korean population would be informed of the dialogue entered into by Korean authorities with the Committee and how, in the future, the Government would implement any decisions made about it by the Committee in pursuance of the Optional Protocol.

476. Necessary additional information was requested on the National Security Law, in particular as far as restrictions or limitations to articles 15, 18 and 19 of the Covenant were concerned. There was concern that, under that law, it was possible to arrest anyone found in conversation with persons from the Democratic People's Republic of Korea, that political prisoners who had been released from prison after serving their sentences were still required to report to the police every three months and that under its provisions even peaceful demonstrations could be forbidden. Further information was also requested on the meaning of the term "espionage" and on the extent to which the Supreme Court was empowered to decide on the legality of the provisions of the National Security Law.

477. As to the prohibition of discrimination on various grounds, clarification was requested of the absence in article 11 of the Constitution of some grounds of discrimination enumerated in article 2, paragraph 1, of the Covenant, particularly race, religion and political opinion. Information was also sought on any remaining de facto discrimination against women in the Republic of Korea, in particular regarding property rights, and measures taken to eliminate them, as well as on the meaning of the term "reasonable cultural discrimination" used in the report. It was asked whether the procurement of

women for prostitution was a criminal offence in the Republic of Korea. Clarification was further requested of provisions of domestic law prohibiting foreigners from holding public office.

478. With regard to article 4 of the Covenant, members of the Committee wished to receive clarification of legal provisions relating to a public emergency, in particular those relating to the powers of the President under those circumstances, and their conformity with the Covenant. Further information was also requested about the constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant.

479. In connection with article 6 of the Covenant, the recent limitation of the categories of crimes subject to the death penalty was welcomed. Clarification of the crimes still carrying the death penalty, particularly under the National Security Law, was requested and, in particular, it was inquired whether the death sentence could still be imposed for robbery. Noting that under national legislation, widely varying penalties, which could range from five years' imprisonment to death, could be applied for practically the same offences, it was pointed out that the Committee had always clearly stated that, under the provisions of the Covenant, the death penalty could be imposed only for the most odious and serious crimes. Information was requested on instructions given to members of the police in connection with the use of force during public demonstrations, the method used to carry out the death penalty and on the legal provisions concerning abortion. Clarification was also requested on the statement in the report that the rights of people suffering from certain categories of communicable diseases could be limited.

480. With reference to articles 7, 8, 9 and 10 of the Covenant, members of the Committee wished to know whether any statement or confession made as a result of torture could be invoked as evidence in court proceedings; whether there had been any complaints of torture of prisoners or detainees and, if so, whether there had been any convictions on such charges. Clarification was requested with regard to a number of individual cases, particularly about how many officials had been found guilty of such violations, the sentences they had received, and whether persons who might have been sentenced in the past on the grounds of confessions obtained under such circumstances would benefit from the positive developments occurring in the Republic of Korea. It was also asked how quickly after arrest a person's family was informed; what were the regulations governing solitary confinement; what was the role of the national security agency with regard to article 9 of the Covenant; and at what age criminal law was applicable. Clarification was also requested of the compatibility with the Covenant of the very long period of pretrial detention, in particular under the National Security Law.

481. Clarification was requested with regard to the legal provisions governing the remedy of habeas corpus, or any other similar remedy, and concerning provisions which stated that an inmate was permitted to see other persons only "when deemed necessary". It was also asked whether the provisions under which the treatment of prisoners was designed to reform and educate them to help to reintegrate them into society, by inculcating a sound national spirit in them, were in accordance with the provisions of the Covenant. As for article 8 of the Covenant, further details were requested about the provisions of the Criminal Code which provided for penal servitude "with a certain amount of labour".

482. Members of the Committee wished to receive further information on the implementation of article 14 of the Covenant and on the structure of the judiciary, including the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary. It was asked how the independence and impartiality of the judiciary was guaranteed; whether there was any free legal aid and advisory scheme and, if so, how it operated; and whether prosecutors were subject to executive or to judicial authority. Also, members of the Committee wished to know the exact nature of the role of the prosecutor, the guarantees of his independence and the responsibilities entrusted to the human rights consultation centres established by him. Clarification was requested about the compatibility with the Covenant of the restrictions mentioned in the report on the right of the person deprived of his liberty to communicate with a lawyer; and on the meaning of the reservation made by the Government relating to appeals against military trials under extraordinary laws. Information was also requested on the implementation of article 15 of the Covenant and in particular the retroactive effect of a decision of unconstitutionality.

483. With reference to articles 12 and 13 of the Covenant, clarification was requested about the de facto and de jure restrictions or limitations on freedom of movement as far as visits to the Democratic People's Republic of Korea were concerned; about the compatibility with the Covenant of certain provisions of the Social Surveillance Act, under which anyone suspected of offences under the National Security Law could be kept under surveillance for up to two years on a renewable basis; and about the Resident Registration Law. It was asked what "preventive restrictions" could be imposed on freedom of movement under article 12 of the Constitution; and what legal provisions governed the admission or expulsion of "boat people" in the country. Information was also requested on what stage had been reached in negotiations being held to solve the serious problem of the separation of families and to bring about their reunion.

484. In connection with articles 17, 18 and 19 of the Covenant, it was asked whether attempts had ever been made to force people to recant their beliefs; whether efforts to promote anti-communism were still made despite the changes that had taken place in the world; whether conscientious objection was permitted under the law; and whether there were any political prisoners. It was also asked whether the condition whereby such prisoners could, apparently, be released only if they renounced their opinions and beliefs, was compatible with the Covenant. Clarification was also requested of the meaning of a sentence in the report that the purposes of the Broadcasting Act were to help the formation of public opinion.

485. With regard to articles 21 and 22 of the Covenant, members of the Committee wished to receive information on the alleged dissolution of certain private university or school teachers' unions. It was asked why an authorization had to be obtained in advance in order to organize meetings or demonstrations, and in how many cases such an authorization was refused and for what reasons.

486. In connection with article 24 of the Covenant, additional information was requested on the exact definition of "juveniles" as well as on measures taken to prevent the employment of children at an age when they should be enrolled in compulsory education.

487. With reference to article 25 of the Covenant, members of the Committee wished to know why certain teachers and journalists were prohibited from becoming founders or members of a political party.

488. Regarding article 27 of the Covenant, members of the Committee wished to receive additional information on the situation and composition of religious and other minorities in the country.

489. In his reply, the representative of the State party recalled that relations between the Republic of Korea and the Democratic People's Republic of Korea were among the most important factors affecting the human rights situation in his country. The adoption of the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, as well as the Joint Declaration on the Denuclearization of the Korean Peninsula, had raised hopes of a dialogue between the two sides. In May 1992, three bodies had been established to work on a basic agreement governing unification. The two sides' differences on the nuclear issue had, however, hindered progress in the negotiations. According to his Government, the reunification of the peninsula had to be based on the principles of self-determination, peace and democracy. The other side took a different approach to that issue, and therefore it was difficult to predict the outcome of the current dialogue. It was, however, to be hoped that an agreement would soon be reached on family reunion since, at present, separated family members were still not allowed to telephone or write to one another.

490. The Republic of Korea was still coping with a very real threat of destabilization and military provocation and, until the other side stopped using terrorism as an instrument of its foreign policy, his country was bound to retain the National Security Law. That law was strictly applied and interpreted in accordance with the Constitution and the Covenant and was only used to counter subversive acts that endangered national security and the democratic order. The substance of a decision of the Constitutional Court of April 1990 which had, inter alia, defined activities "endangering national security and survival" as well as the "basic liberal democratic order" had been incorporated into the National Security Law. It was, therefore, not possible to be convicted under that law simply for expressing communist ideas or for having a positive attitude towards the Democratic People's Republic of Korea, provided that those sentiments did not lead to the commission of explicit acts. The concept of espionage covered only information that might jeopardize national security, and it was not invoked unless there had clearly been an attempt to pass information with the knowledge that that information would endanger the Republic of Korea. People had been convicted under the National Security Law if they had attempted or advocated the overthrow of the Government by violent means and, in all cases, defendants had enjoyed the full constitutional safeguard that ensured a fair trial. The amendment to the National Security Law was, however, not retroactive and the old law still applied to acts that had taken place before the amendment.

491. Referring to questions relating to the status of the Covenant, the representative of the State party explained that under article 6 of the Constitution the Covenant had the same effect as domestic law. Guarantees contained in the Covenant could, however, not be overturned by subsequent domestic legislation, owing to the Republic of Korea's commitment to human rights and the increasing public awareness of the Covenant. Furthermore,

since most of the rights enshrined in the Covenant were also embodied in the Constitution, any conflicting domestic legislation would be deemed unconstitutional. If an individual claimed that his rights under the Covenant had been infringed, the court would normally rule on the basis of domestic legislation; in the rare cases where that was not possible, the Covenant could be invoked directly before the courts. Furthermore, according to his Government, all the rights enshrined in the Covenant were covered by article 37 of the Constitution and, therefore, could not be neglected. Complaints lodged by a petitioner would be dealt with by the relevant administrative agency and, if the petitioner was not satisfied with the result, he was automatically entitled to lodge a complaint with the courts. Moreover, individuals were free to activate the procedures outlined in the Optional Protocol, and in case the Committee adopted views concerning the Republic of Korea, the Government would make every effort to reflect them in its future legislation.

492. With regard to questions relating to equality and non-discrimination, the representative of the State party stated that the list laid down in article 11 of the Constitution was purely indicative, and other grounds of discrimination, such as political opinion, were not excluded. The term "reasonable cultural discrimination" was intended to cover differentiation based upon a person's educational accomplishments. Although foreigners were not guaranteed the right to hold public office, the Government did employ foreigners on a contractual basis. Despite the advances in women's status, most female workers were still in low-paid jobs and there were few women in senior academic posts. Furthermore, there were not enough State child-care facilities for low-income families and traditional discrimination against women still lingered on. The Government had endeavoured to eliminate traditional stereotypes, promote women's participation in social and economic activities and increase welfare facilities. The Government was also considering an amendment to a provision of the Nationality Act which provided that women were obliged to take their husband's nationality on marriage and to be naturalized if the husband was naturalized.

493. Regarding article 4 of the Covenant, the representative of the State party stated that, under article 37 of the Constitution and in conformity with article 4, paragraph 2, of the Covenant, it was not permissible to restrict the "essential aspect" of a freedom or right. Under article 76 of the Constitution, the President could issue an emergency order in times of insurgency, external threat, natural disaster or serious financial or economic crisis. If the National Assembly subsequently found that the emergency order was not justified it would be revoked forthwith.

494. With reference to article 6 of the Covenant, the representative of the State party stated that, in addition to the offences covered by the National Security Law, 15 crimes were subject to the death penalty. The death sentence could be imposed in cases of robbery committed with vile aggravating circumstances. The Government had already considerably reduced the number of capital offences and intended to progress further in that direction. The National Security Law dealt with only one generic crime - anti-State activities that endangered national security - and many offences referred to in the law, such as murder for the purposes of insurrection, were also covered by the Criminal Code. Under the Penal Administration Act the death penalty was carried out by hanging. Although abortion was penalized under the

Criminal Code, the Maternal and Child Health Act permitted exceptions in cases of rape, incest and threat to the health of the mother. The reference in the report to abortions for eugenic reasons covered cases where the foetus was severely deformed.

495. Regarding article 7 of the Covenant, the representative of the State party emphasized that the courts would not accept a confession unless it could be proved beyond reasonable doubt that it had been made voluntarily. Referring to specific cases mentioned by some members of the Committee, he explained that the conviction of Mr. Kim Rae Park had been based on objective evidence and not on a confession extracted under torture, as had been alleged. His sentence had been reduced for good behaviour and he had been released on probation on 25 May 1991. Following an investigation into the unnatural death of Mr. Jong Chul Park in January 1987, 5 police officers had been convicted and sentenced to prison terms of between 3 and 10 years. Additionally, 6 other officers had been sentenced to prison for 2-10 years, 14 had received suspended sentences and 9 more cases were awaiting trial. Places of detention were inspected regularly by prosecutors and the Ministry of Justice and any complaints of inhumane treatment were investigated by the prosecutor's office. Concerning long-term prisoners convicted of attempts to overthrow the Government by violence, the representative said that the Government could not afford to release them unless it was sure that their release would not jeopardize national security.

496. Responding to questions raised in connection with articles 9, 10 and 11 of the Covenant, the representative of the State party said that detention pending trial could not exceed six months and the court had to render its judgement during that period or release the suspect. There were no exceptions to a suspect's right to communicate with counsel and the Constitutional Court had decided, in January 1992, that article 62 of the Penal Administration Act was unconstitutional because it prohibited a detainee from meeting his attorney without being accompanied by a prison officer. The purpose of the correctional system was the prevention of further crimes and the rehabilitation of prisoners. To accomplish the latter, inmates received correctional education aimed at cultivating sound civic values with a view to preventing the recurrence of crimes. Inmates incarcerated under the National Security Law also participated in correctional education programmes, including exchange of views about competing ideologies, the goal being that a prisoner's re-entry into society should not pose a problem to the country. Inmates whose beliefs, translated into action, might pose a threat to the country were not eligible for parole. The inculcation during prisoners' education of what was referred to in the Republic of Korea as a "sound national spirit" aimed at ensuring that convicted persons when re-entering society would be imbued with traditional cultural values unique to their country and thus be capable of adapting to a normal life.

497. Referring to questions relating to article 14 of the Covenant, the representative of the State party said that prosecutors were officials of the executive branch, coming under the authority of the Ministry of Justice, and were guaranteed independence by the Prosecution Organization Act. They could not be suspended, except by impeachment or conviction for certain crimes, and their salary levels were guaranteed. The National Security Planning Agency gathered domestic security information about communist and subversive activities and conducted investigations in a limited number of cases,

including alleged violations of the National Security Law. Judges served for 10 years and could be reappointed for further terms; they could not be dismissed except by impeachment or conviction for certain crimes and their political activities were restricted. The Constitutional Court ruled on the constitutionality of laws, impeachment cases, the dissolution of political parties and conflicts of jurisdiction. The Military Court Act specified the procedures to be applied by military justice and guaranteed the fundamental rights of the defendant in the same way as the civil courts' Code of Criminal Procedure, the only exception being the right to appeal. Military justice could apply to civilians who committed such crimes as military espionage, supply of contaminated food to soldiers, and unlawful activities in respect of prisoners-of-war and sentries under martial law. In the latter connection, the term "extraordinary law" mentioned in the report referred to martial law as declared in states of siege or on the outbreak of war.

498. With reference to articles 12 and 13 of the Covenant, the representative of the State party explained that, since the hope of peaceful reunification had yet to be fulfilled, some restrictions were placed on travel to the Democratic People's Republic of Korea, in acordance with article 12, paragraph 3, of the Covenant, which provided for restrictions to the freedom of movement for reasons of national security. The Government was working with the Office of the United Nations High Commissioner for Refugees to provide humanitarian assistance to boat people until they could be resettled in the country of their ultimate destination or a third country willing to accept them. So far, about 1,220 boat people had been resettled in third countries after arriving in the Republic of Korea and 155 were still residing in a temporary accommodation camp.

499. In response to questions relating to articles 17, 18 and 19 of the Covenant, the representative of the State party emphasized that the Republic of Korea did not practise censorship. The writings of Marx, Lenin and other communist works were, for instance, freely available in bookstores and university libraries. Propaganda that could destabilize the country was, however, restricted under the National Security Law and the publication, copying, transportation or dissemination of propaganda for the purpose of jeopardizing national security was forbidden. The Performance Act, the Movies Act and the Act concerning Records and Video Materials imposed, in accordance with article 19 of the Covenant, very limited restrictions on movies, records and tapes for the purpose of maintaining public order and morality.

500. With regard to articles 21, 22 and 25 of the Covenant, the representative of the State party stated that, on receiving notice of an assembly or demonstration, the police examined it to see whether the gathering would occur at a prohibited time and place and whether it would disrupt traffic. If the demonstration had the potential to create violence or posed a clear threat to public order and safety, a prohibition order was issued, nullification of which could be sought in the courts. A recently established Assembly and Demonstration Consideration Committee had issued objective standards for limiting prohibitions of assemblies, with a view to better protection of human rights. Teachers and journalists were prohibited from joining certain political parties so as to preserve their strict impartiality in party politics. Under article 8 of the Constitution, if the purpose or activities of a political party were contrary to the fundamental democratic order, the Government could bring an action for its dissolution before the Constitutional Court.

501. Regarding article 24 of the Covenant, the representative of the State party stated that the Government was making every effort to prevent the employment of children in bars or in the entertainment business.

502. In connection with article 27 of the Covenant, the representative of the State party emphasized that the Republic of Korea was a homogenous nation with a distinct population sharing a common language and culture. There were, however, approximatively 51,000 residents of foreign origin, of whom 23,500 were Chinese. All of them enjoyed fundamental human rights in every field, pursuant to the Constitution and the Covenant.

Concluding observations by individual members

503. Members of the Committee thanked the representative of the State party for his cooperation in presenting the report and for having endeavoured to respond to the many questions asked by members. The report, which had been submitted within the specified period, contained detailed information on the laws and regulations relating to the implementation of the Covenant. However, it lacked information about the implementation of the Covenant in practice and about factors and difficulties impeding the application of the Covenant.

504. Members noted with satisfaction that the Republic of Korea had acceded to a number of international human rights instruments, including the Covenant and its Optional Protocol, and had joined ILO. Members were also pleased to note that consideration was being given to the possibility of withdrawing the Republic of Korea's reservations to the Covenant. Furthermore, progress had been made with regard to legal aid and towards narrowing the scope of operation of the National Security Law. Internal dissent was now possible and the Constitutional Court was playing a vigorous and independent role.

505. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. The Constitution itself did not cover all the rights enshrined in the Covenant and the argument that, under article 37 of the Constitution, various rights and freedoms not enumerated in the Constitution were not to be neglected, was not deemed satisfactory. Deep concern was expressed over the continued operation of the National Security Law. Although the political situation in which the Republic of Korea found itself undoubtedly had implications for public order in the country, the importance of such a situation ought not be overemphasized. It was thus felt that ordinary laws and specifically applicable criminal laws should be sufficient to deal with offences against national security. It was noted with concern that some issues addressed by the National Security Law were defined in somewhat vague terms, which seemed to allow for broad interpretation and result in sanctions for acts that might not be truly dangerous for the State. Furthermore, a broad definition of State secrets in connection with the definition of espionage was potentially open to abuse.

506. Members also expressed concern in respect of the persisting areas of discrimination against women; the still high number of offences liable to the death penalty; the inclusion of robbery among the offences carrying the death penalty, which seemed clearly to contravene article 6 of the Covenant; the use of excessive force by the police; the excessively long periods of pretrial detention; the actual implementation of article 9, paragraph 3, of the Covenant; the extent of the investigatory powers of the National Security

Planning Agency; the implementation of article 12, particularly as concerned visits to the Democratic People's Republic of Korea, problems relating to article 15 of the Covenant; the continued imprisonment of persons on grounds of their political opinion; and the request of an advance authorization for assemblies and demonstrations. It was also considered that the conditions under which prisoners were being re-educated did not constitute rehabilitation in the normal sense, but rather coercion and an infringement of the provisions of the Covenant relating to freedom of conscience.

507. The representative of the State party assured the members of the Committee that the comments that had been made would be transmitted to his Government and stressed the importance his country attached to the dialogue with the Committee. The outcome of the consideration of the report by the Committee had increased the Government's awareness of its responsibilities under the Covenant. Positive comments made by members would be an encouragement to renew efforts in favour of human rights while criticisms would act as an accelerator where further improvement was called for.

508. In concluding the consideration of the initial report of the Republic of Korea, the Chairman thanked the delegation for its clear and comprehensive replies to the questions asked by members of the Committee. He expressed the hope that all the Committee's comments would be transmitted to the competent bodies and taken into account during the formulation of new legislation and the revision of existing laws.

Comments of the Committee

509. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

510. In accordance with that decision, at its 1173rd meeting, held on 29 July 1992, the Committee adopted the following comments.

Introduction

511. The Committee expresses its appreciation for the State party's well-documented report, which had been submitted within the specified time-limit. The report contained detailed information on the laws and regulations relating to the implementation of the Covenant. However, the Committee notes that the report does not include sufficient information about the implementation of the Covenant in practice and about factors and difficulties that might impede the application of the Covenant. At the same time the Committee appreciates the clear and comprehensive oral replies and detailed clarifications given by the delegation.

1. Positive aspects

512. The Committee notes with satisfaction that in recent years the Republic of Korea has become a party to a number of international human rights instruments, including the Covenant and its Optional Protocol, and that it has

made the declaration provided for in article 41 of the Covenant. It has also joined ILO. The Committee also notes with satisfaction that consideration is currently being given to the possibility of withdrawing the Republic of Korea's reservations to the Covenant. Additionally, progress has been made in regard to providing legal aid and towards narrowing the scope of operation of the National Security Law. Internal political dissent is now more accepted. The Constitutional Court, an independent organ, is playing a vigorous and important role.

2. Factors and difficulties impeding the application of the Covenant

513. The Committee notes that the relations between the Republic of Korea and the Democratic People's Republic of Korea still appear to be an important factor affecting the human rights situation in the Republic of Korea. The recent conclusion of the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation appears to constitute a positive step. According to the authorities, the Republic of Korea is, however, still coping with a very real threat of destabilization and military provocation, and therefore the Government continues to hold the view that it is essential to retain the National Security Law in order to protect the security and integrity of its liberal democratic system.

3. Principal subjects of concern

514. The Committee expresses its concern over the fact that the Constitution does not incorporate all the rights enshrined in the Covenant. Also, the non-discrimination provisions of article 11 of the Constitution would seem to be rather incomplete as compared with articles 2 and 26 of the Covenant. These concerns are not allayed by the argument that, pursuant to article 37 of the Constitution, various rights and freedoms not enumerated therein are not to be neglected.

515. The Committee's main concern relates to the continued operation of the National Security Law. Although the particular situation in which the Republic of Korea finds itself has implications for public order in the country, its influence ought not to be overestimated. The Committee believes that ordinary laws and specifically applicable criminal laws should be sufficient to deal with offences against national security. Furthermore, some issues addressed by the National Security Law are defined in somewhat vague terms, allowing for broad interpretation that may result in sanctioning acts that may not be truly dangerous for State security and responses to those acts unauthorized by the Covenant.

516. The Committee wishes to express its concern regarding the use of excessive force by the police; the extent of the investigatory powers of the National Security Planning Agency; and the implementation of article 12, particularly in so far as visits to the Democratic People's Republic of Korea are concerned. The Committee also considers that the conditions under which prisoners are being re-educated do not constitute rehabilitation in the normal sense of the term and that the amount of coercion utilized in that process could amount to an infringement of the provisions of the Covenant relating to

freedom of conscience. The broad definition of State secrets in connection with the definition of espionage is also potentially open to abuse.

517. The Committee also expresses concern about the still high number of offences liable to the death penalty. In particular, the inclusion of robbery among the offences carrying the death penalty clearly contravenes article 6 of the Covenant. The very long period allowed for interrogation before charges are brought is incompatible with article 9, paragraph 3, of the Covenant. Other areas of concern relate to the continued imprisonment of persons on grounds of their political opinion; the persistence of discrimination against women in certain respects; problems relating to the principle of the lawfulness of the penalties covered by article 15 of the Covenant; and the requirement for advance authorization of assemblies and demonstrations.

4. Suggestions and recommendations

518. Taking into account the positive developments regarding respect for human rights that have taken place in the State party over recent years, the Committee recommends that the State party intensify its efforts to bring its legislation more in line with the provisions of the Covenant. To that end, a serious attempt ought to be made to phase out the National Security Law, which the Committee perceives as a major obstacle to the full realization of the rights enshrined in the Covenant and, in the meanwhile, not to derogate from certain basic rights. Furthermore, measures should be taken to reduce the cases in which the death penalty is applied; to harmonize to a greater extent the Penal Code with the provisions of article 15 of the Covenant; and to reduce further the restrictions on exercising the right to peaceful assembly (art. 21). Finally, the Committee suggests that the Government actively consider withdrawing its sweeping reservation in respect of article 14 and take additional steps with a view to enhancing public awareness of the Covenant and the Optional Protocol in the State party.

BELARUS

519. The Committee considered the third periodic report of Belarus (CCPR/C/52/Add.8) at its 1151st to 1153rd meetings, held on 14 and 15 July 1992 (CCPR/C/SR.1151-1153). (For the composition of the delegation, see annex VIII.)

520. The report was introduced by the representative of the State party, who emphasized that since the consideration of the second periodic report and the preparation of the third periodic report in July 1990, enormous changes had taken place in the political, social and economic life of Belarus. The representative drew attention to the new legislation adopted or being prepared by the national Parliament, thus specifying the constitutional and legal framework for the implementation of the Covenant. In particular, he mentioned a new electoral act, a nationality act adopted in 1991, an act on referendums of 13 June 1991, an act on the basic principles of the people's power of 27 February 1991, an act amending the monopoly of the Communist Party and introducing a multiparty system and acts on military service, together with a range of economic laws.

521. The requirements for the publication and entry into force of all legislative texts adopted by the Supreme Soviet were also provided for in a law which made their publication mandatory within 10 days of their adoption. International treaties concluded by Belarus also had to be published in the newspapers, in Belarusian and in Russian, so that each citizen might be informed of them.

522. The Declaration of State Sovereignty by Belarus, adopted by the Supreme Soviet at its first session on 27 July 1990, was the cornerstone of the new political system emerging in Belarus. A law of 25 August 1991 had given the Declaration the rank of a constitutional law. It was an extremely significant document which had not had any equivalent in 70 years of Soviet power. In particular, the Declaration proclaimed the supremacy of the rule of law and the independence of the Republic in relations with other countries.

523. The representative said that pending the adoption of the new Constitution, which was currently being prepared, and one of whose basic features was that it took account of all the international obligations assumed by Belarus, the current Constitution, as amended, remained in force and the legislation of the former Union of Soviet Socialist Republics still applied, provided it was not incompatible with the national Constitution.

524. The representative of Belarus told the Committee that on 14 January 1992 the Supreme Soviet had ratified the Optional Protocol to the International Covenant and had made the declaration provided for in article 41 of the Covenant. He also said that Belarus had announced its intention to declare its territory a nuclear-weapon-free zone and, ultimately, to become a neutral State.

Constitutional and legal framework within which the Covenant is implemented; right to self-determination; non-discrimination and equality of the sexes; and rights of persons belonging to minorities

525. Regarding those issues, the members of the Committee asked what had been the legal and practical consequences of the dissolution of the Soviet Union and the establishment of the Commonwealth of Independent States for the implementation of the rights set forth in the Covenant, and their enjoyment by individuals; whether there had been any changes regarding the remedies available to individuals who considered they had been victims of a violation of their rights under the Covenant; what was the status of the Covenant under domestic law; and what had been the impact on the actual implementation of the Covenant of the adoption of the Act on the Status of Judges of 4 August 1989, the Contempt of Court Act of 2 November 1989 and the Foundations of Legislation on the Judicial System of 17 November 1989. They also asked for clarification of the new systems of power being established in Belarus; of the measures taken or contemplated to ensure consistency between any new constitutional provisions or other legal instruments and the Covenant; of the activities undertaken to enhance the role and status of women; and what improvements had occurred in the situation of minorities since the consideration of the second periodic report.

526. In addition, members of the Committee sought further information with respect to the provisions of the draft Constitution and made numerous comments thereon. They wished to know, *inter alia*, what effect the disappearance of

the Supreme Court of the former USSR had had on the status and functioning of the Supreme Court of Belarus; why the right to vote was denied to people in custody under procedures established under criminal procedural law; whether, pending new legislation, the criminal legislation of the former USSR was still in force; and whether Jewish people, perceived elsewhere in the world as a religious minority, continued to be qualified, as under earlier Soviet law, as a national minority. Clarification was also requested on the selection and nomination of judges, their career structure and the disciplinary measures to which they were subject; on the role actually played by the Procurator's Office, especially with respect to the courts; on the role of the police, and on the procedure for appeal against decisions and actions of State bodies or officials, as well as against death sentences passed by the Supreme Court of Belarus. In addition, they wished to know whether domestic legislation that contravened the Covenant would be declared null and void and whether the Covenant would be applied directly in the courts.

527. In reply, the representative of the State party said that the dissolution of the USSR had given rise to economic disruptions, but as far as the rights of citizens were concerned, there had been an enormous step forward. After the ratification of the Covenant, many texts had been adopted to guarantee the exercise of human rights. At present, those guarantees were being expanded and increased. Nearly all the laws enacted since 1990 included a provision stating that, if a particular question was not covered by a law, the international rule applied. The draft of the new Constitution on which the Committee members had based their comments had been revised several times and was already out of date. The latest draft was designed to reflect as much of the experience of other countries as possible, so that a workable Constitution would be produced. Pending the adoption of new legislation, the laws of the former USSR were still in force, provided that they did not flagrantly contradict the direction being taken by the new Republic. In other cases, Belarus had applied the provisions of international standards such as the Covenant. Belarus was committed to respecting its international obligations under the treaties to which it was a party; therefore, there was no need to incorporate the Covenant into the Constitution. Concerning the withdrawal of voting rights from persons in detention, the Ministry of Justice would endeavour to ensure that the anomaly was removed in the new legislation. The legislation affecting the activities of procurators had not been changed; however, in practice, procurators merely offered their opinions in their capacity as prosecuting counsel acting on behalf of the State. There were plans to place the Procurator's Office under the authority of the Ministry of Justice in order to remove its influence over the courts altogether.

528. There was as yet no Administrative Court in Belarus and the law currently in force regarding violations of citizens' rights was that of the former Soviet Union. One of several possibilities being considered was action by a collegiate body, which could be appealed against. The new Criminal Code was still at the drafting stage.

529. The representative said that 77 nationalities currently lived together in Belarus. The four main minorities were Ukrainians, Russians, Poles and Jews. A draft law on the question of minorities would probably be adopted on second reading at the autumn session of Parliament. Members of national minorities in Belarus enjoyed the same rights as all other citizens of the Republic. There were about 700,000 Jews in Belarus and they possessed their own

religious institutions and schools, although perhaps not as many as they would like. The State placed no obstacles in the way of such institutions.

530. He informed the Committee that legislative provisions on the status of women, pregnancy and children had been amended considerably, and in that connection cited the law of 28 June 1992.

Right to life, treatment of prisoners and other detainees, and liberty and security of the person

531. With respect to these issues, the members of the Committee wished to know about the current status of planned criminal legislation designed to reduce significantly the number of crimes for which capital punishment could be ordered; how often and for what crimes the death penalty had been imposed and carried out since the consideration of the second periodic report; and whether any consideration had been given in Belarus to the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant. They also requested further information on safeguards against torture and other impermissible methods of investigation; on the changes made to the Code of Criminal Procedure and the Corrective Labour Code relating to the implementation of article 10 of the Covenant; on the conditions of detention in colony settlements and corrective labour colonies, and on the compliance of their authorities with United Nations Standard Minimum Rules for the Treatment of Prisoners; on the conditions of persons held in punishment or disciplinary isolation units or in solitary confinement; on the existence of penal sanctions consisting only of forced labour, and on the compatibility of any such legislation with article 8 of the Covenant; on measures taken to restructure the work of the militia and other police institutions, with a view to better protecting the interests of the State and the rights of citizens; and on experience to date with the actual implementation of the Decrees adopted in July 1987 and January 1988 regulating conditions and procedures for providing psychiatric care.

532. The representative of the State party, replying to the questions raised, said that under the proposed new criminal law of Belarus the number of crimes for which capital punishment could be ordered had been reduced from 38 to 4: deliberate murder with aggravating circumstances; rape with serious consequences; the kidnapping of a child; and acts of terrorism with aggravating circumstances. The abolition of the death penalty was an aspiration widely shared, but a majority still favoured its maintenance. In Parliament, a majority of deputies also favoured its retention for grave offences. Comparatively few persons had been sentenced to death since 1985, ranging from 17 to 21 cases per year. In 25 to 30 per cent of such cases, the sentence had been commuted to deprivation of liberty. There had been an increase recently in the crime rate, which might be connected with the current economic situation, but there had not been any proportional increase in the number of persons sentenced to capital punishment. In 1991, there had been 600 murders in Belarus, which was an increase of 200 over the previous year, but only 20 persons had been sentenced to death. Torture was strictly prohibited under the Code of Criminal Procedure and its actual or threatened use was a punishable offence.

533. With respect to conditions of detention, the representative described various types of regimes applied - general, hard, strict and special -

according to the seriousness of the offence committed. He explained that colony settlements were places of deprivation of freedom where educational activities were conducted in conjunction with corrective labour. Such colonies were reserved for persons who had committed only offences of negligence without serious consequences. The Government was determined to do all in its power to achieve full compliance with the Standard Minimum Rules for the Treatment of Prisoners. Solitary confinement was applied only in cases of persistent disobedience and only when all other means had been tried and failed. The maximum period of confinement was 15 days in disciplinary isolation units or colonies and 6 months in most prisons. No penal sanctions consisting only of forced labour were imposed by the courts; therefore, there was no contravention of article 8 of the Covenant. There had been much discussion concerning the restructuring of the militia with a view to making it more democratic, but work on new laws and regulations was not yet completed. In accordance with the Decrees of July 1987 and January 1988 on psychiatric care, the relevant institutions had been notified by the Ministry of the Interior that they would henceforth operate under the authority of the Ministry of Health. Under article 124-2 of the Penal Code, it was a criminal offence for a person known to be of sound mind to be placed in a psychiatric institution. That provision had been in force for the past three years, and since then no case had arisen where such action had allegedly taken place.

Right to a fair trial

534. With regard to that issue, members of the Committee requested additional information on the right to defence introduced by article 7 of the Foundations of Legislation on the Judicial System of 17 November 1989; on the free legal aid system in Belarus; on measures that had been taken to ensure that trials were genuinely public, allowing access to all those interested, including representatives of the local and foreign press; and on the procedure for the appointment of judges.

535. In his reply, the representative said that the Foundations of Legislation on the Judicial System provided valuable guarantees to detainees. In that connection, strengthening the powers of the defence and ensuring the attendance of a defence lawyer from the moment of detention, arrest or charge had been of particular importance. A detainee could request the services of any lawyer desired and, if that did not prove feasible, the services of another lawyer were provided. In the case of minors or where severe sentences might be imposed, the presence of a defence lawyer was compulsory. The fees chargeable by lawyers were subject to regulation and, in the case of certain categories of defendants, such as invalids, the unemployed or persons in poor health, legal services were provided without charge. Hearings were held in public, and the press, including foreign journalists, could attend, except in certain types of cases where confidentiality was essential or where the accused requested the exclusion of the press on grounds that the judges might be improperly influenced. Judges had security of tenure and enjoyed good salaries, which helped to ensure their independence.

Freedom of movement and expulsion of aliens, right to be recognized as a person before the law, freedom of religion and expression

536. With regard to these issues the members of the Committee asked about the current status and content of legislation on entry to and departure from the

territory; for information on the actual implementation of the Decree of 25 August 1987 relating to measures taken against foreign nationals for preventing infection with the AIDS virus, particularly as to required medical examinations and appropriate coercive measures; for information concerning the law and practices relating to permissible interference with the right to privacy; for details on limitations, if any, on freedom of conscience and religion; and for details on the situation in Belarus of the right to seek, receive and impart information and ideas of all kinds. They also inquired how citizenship of Belarus was acquired by former citizens of the USSR and their descendants; whether there was a danger that the number of stateless persons would increase; and whether conscientious objection to armed service was tolerated and regulated by law.

537. Members also asked whether the Soviet law of 1990 restricting the right of anyone in possession of State secrets to leave the territory was still in force, and pointed out that such provisions would be contrary not only to the provisions of the Covenant, but also inadmissible in a democratic State. Members of the Committee noted that Belarus still required an exit visa, and said that the requirement was disturbing, as such a measure was clearly indicative of an undemocratic system of government. They inquired whether the authorities of Belarus planned to review the need to maintain that requirement. They also asked if citizens would henceforth merely require a passport in order to travel abroad freely; whether they still needed an invitation in order to travel abroad; and whether they could appeal to the courts if they were refused permission to leave the country. Members asked whether the system of residence permits (propiska) was still in force and if so, whether there were plans to abolish it.

538. Concerning the acquisition of citizenship by descendants, members asked whether the new legislative provisions distinguished between the father and the mother for the transmission of nationality to children and whether persons of Russian or former Soviet origin living in Belarus could acquire citizenship of Belarus and on what conditions. Members also asked for further information on freedom of expression and access to the media. In particular, they inquired whether any specific measures had been adopted for the privatization of television and the radio, which were still a State monopoly; whether citizens of Belarus were able to purchase foreign newspapers and magazines, and whether the authorities of Belarus had tacitly authorized Belarusian or foreign journalists or certain groups of citizens freely to consult the archives of administrative departments. They also asked whether citizens whose honour or dignity had been injured by the contents of an article in any form of publication had the right to obtain redress.

539. Members of the Committee also asked for more detailed information on the admission to hospital of some Belarusian citizens suffering from AIDS, on the situation of conscientious objectors, and on the possibilities of a review of article 119 of the Penal Code, pursuant to which homosexuality was illegal and persons found guilty of homosexual practices were liable to a penalty of up to five years' imprisonment.

540. Replying to the questions raised, the representative of the State party explained that the Soviet law relating to entry into and departure from the territory was applied. The new Belarusian law, which had gone through a first reading in Parliament, would come into force in July 1993. The bill contained

progressive provisions which were in conformity with the Covenant. The requirement for an exit visa had been abolished in the case of diplomats and official delegations, although it had been maintained for individuals. In the future, those restrictions should be abolished. The question of prohibition on the departure of persons in possession of State secrets was complex, but the situation had, nevertheless, changed considerably. Even though the Soviet law on entry and departure was still in force in Belarus, it was no longer strictly applied and no citizen was actually prevented from leaving Belarus on those grounds. If an exit visa was denied, an appeal could be made to the courts. In that respect, practice had overtaken the legislation being prepared. The new type of passport would indicate only the holder's citizenship but no longer state his nationality. The authorities intended to abolish the residence permit (propiska) towards the middle of 1993. Any person of Russian or other origin living in the Republic had become a Belarusian citizen when the law on citizenship had been adopted.

541. Regarding permissible interference of privacy, the representative pointed out that full information on the topic had been provided in the initial report (CCPR/C/1/Add.27); since then the situation had, in general, changed little. However, some amendments had been made to the Code of Criminal Procedure in order better to guarantee the right to privacy. There were criminal penalties for breaches of the provisions protecting privacy, in particular in articles 124, 135 and 136 of the Penal Code.

542. Regarding freedom of conscience, the representative said that a bill on freedom of conscience was currently being considered by the competent authorities. Virtually all the property confiscated from the Church had been returned to it. The Supreme Soviet had recently issued a decree declaring the principal Catholic and Orthodox festivals to be public holidays. The right to seek, receive and impart information was virtually unrestricted in Belarus, except when matters of national security or professional secrecy were at stake. Foreign publications were on sale freely in Belarus; Radio Liberty, which had previously been considered a subversive radio station, had recently been accredited with the Ministry of Foreign Affairs. Belarusian legislation stipulated that, if a person was the victim of libel or defamation in the media, he could take the matter to the courts and demand rectification of the information as well as the appropriate redress.

543. The representative also said that current legislation made no provision for the right to refuse to perform military service on religious grounds, although practice - as in many other spheres - was ahead of current legislation: those who refused to bear arms were assigned to special units. The new bill on military service made provision for conscripts to refuse to perform military service on religious grounds. Articles 118 and 119 of the Penal Code, relating to immoral behaviour towards minors, were still applicable. A bill on homosexuality was being examined, and if it was adopted criminal penalties would be applied only in respect of acts involving violence against minors or persons in a position of dependence. As to the admission into hospital of people suffering from AIDS, he emphasized that the individuals concerned were people who refused to have a medical examination, although they were suspected of carrying the virus. The Republic did not yet have its own legislation on the matter, which was the reason it applied the laws of the former USSR.

Freedom of assembly and association and right to participate in the conduct of public affairs

544. Regarding those rights, the members of the Committee asked about the outcome of the discussion on "improving the legal regulation of conditions and procedures for holding peaceful assemblies, processions and demonstrations" and what further steps had been taken. They also requested information on the laws and regulations governing the right to strike and what the practice was in that regard, as well as information on the laws and regulations governing the founding, registration and financing of political parties and whether multiparty elections at the State and local level were to be expected.

545. Committee members also asked for details of the reasons for the refusal to register the Communist Party and of its influence and importance in Belarus. They also asked for clarification of the organizational aspects of the "nationwide discussions".

546. In his reply, the representative of the State party said that in 1988 his country had adopted provisions concerning the organization of demonstrations pursuant to which, permission, which was granted in 99 per cent of cases, was necessary to organize meetings. One could appeal against a refusal. In practice, there were very many meetings, processions and demonstrations in Belarus and they were organized with or without permission. Regarding the right to strike, the Soviet law was still in force. A bill on the subject prepared by the Ministry of Justice contained no restrictions applicable to people participating in strikes.

547. At the end of 1990, Parliament had adopted provisional measures concerning the registration of social and political organizations and associations. So far 8 political parties, 8 socio-political movements and 400 other social associations had been registered. No applications had been rejected, except that of the Communist Party of Belarus. Registration of the Party, which currently had 60,000 members, had been refused not for political reasons, but because of shortcomings and technical errors in the documents submitted with the application. The Supreme Court had, nevertheless, decided that the Communist Party of Belarus should be registered, and that had been done in June 1992. The representative provided the clarification requested in respect of the nationwide discussions and referendums. Since 1990, only one referendum had been held to decide whether the population of Belarus was in favour of the preservation of the USSR. Although the vote had been in favour of its preservation, the USSR had nevertheless ceased to exist.

Concluding observations by individual members

548. The members of the Committee thanked the delegation of Belarus for the detailed introduction to its report and for the sincerity and honesty with which it had replied to the many questions put by the Committee. The replies had been to the point and had concerned not only legislation but also practice. They drew attention to the delegation's competent presentation of the present situation in Belarus and the commendable spirit that had marked the dialogue between the Committee and the State party's delegation. The members of the Committee had been able to ascertain that unquestionable progress had been made towards effectively ensuring civil and political rights, and voiced the hope that the forward-looking trend would continue.

549. At the same time, the members of the Committee stressed that Belarus was at a turning-point, and pointed out that the dialogue had revealed shortcomings in current legislation, attributable to the fact that it was still essentially based on the legislation of the former USSR; that the legal system as a whole was under review; and that it was encouraging to hear the delegation state that the experience of democratic countries, particularly in the field of human rights, would be studied and made use of in order to reinforce legal safeguards for civil and political rights. They were gratified by the intentions expressed which held out hope of progress in such important fields as the reform of the Penal Code and the Code of Criminal Procedure, the status of judges, the organization of the judiciary and the reform of police organization.

550. The members of the Committee also said that it was to be hoped that the new legislation, and especially the new Constitution currently being prepared, would take into account not only the provisions of the Covenant and of the other international human rights instruments, but also the relevant observations made by the Committee. In particular, the members of the Committee failed to see why the former Republics of the USSR, including Belarus, still showed a disconcerting reluctance to bring legislation concerning freedom of movement into line with the Covenant. In particular, they failed to understand why they continued to deny individuals the right to leave the country on the grounds that they were in possession of State secrets, despite the fact that the criterion laid down by article 12, paragraph 3, of the Covenant was perfectly clear. The same was true of the exit visa and the system of residence permit (propiska). They were also deeply concerned about the number of offences that carried the death penalty, and hoped that the number would be reduced to four, as the delegation had announced.

551. The representative of the State party thanked the members of the Committee for the understanding they had shown of the situation in Belarus and assured the Committee that he would do his utmost to ensure that the new laws would meet with its satisfaction. In any case, he would transmit all the constructive remarks that had been made to the Government.

552. The Chairman of the Committee thanked the delegation of Belarus for the frankness with which it had explained and updated a report that already contained a wealth of information; the task had been all the easier as there had been numerous upheavals in the period that had elapsed since the report had been submitted. The extremely constructive dialogue with the Committee had shed light both on positive aspects and on grounds for concern, which, it was to be hoped, would be taken into account in the legislative and constitutional review. The retention of the classification of persons belonging to any religion, in particular the Jewish faith, as a distinct nationality was considered to be without justification.

Comments of the Committee

553. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

554. In accordance with that decision, at its 1172nd meeting, held on 29 July 1992, the Committee adopted the following comments.

Introduction

555. The Committee expresses its appreciation to the State party for its report and for engaging, through a high-ranking delegation, in a constructive and frank dialogue with the Committee. The wealth of additional information provided in the introductory statement and in the replies given by the delegation of Belarus to the questions raised by the Committee and by individual members allowed the Committee to have a clearer picture of the overall situation in the country at a turning-point in its history as it makes the transition towards a multiparty democracy.

556. The report and the additional information that was subsequently provided enabled the Committee to obtain a comprehensive view of the State party's compliance with the obligations undertaken under the International Covenant and the human rights standards set forth therein.

1. Positive aspects

557. The Committee notes with satisfaction that there has been clear progress in securing civil and political rights in Belarus since the consideration of the second periodic report, and especially since the submission of the third periodic report in July 1990. It is particularly noteworthy that the reforms in Belarus are being handled in a manner that allows a propitious social and political environment for the further protection and promotion of human rights.

558. The Committee also notes with satisfaction that recently enacted laws, notably the Law on Citizenship, are of a liberal character, demonstrating the Government's intention to restructure society in accordance with basic democratic principles. Existing laws, for example those relating to national minorities, are also generally being applied in a manner compatible with the Covenant. Additionally, it welcomes the readiness of the Government of Belarus to make use of the experiences of established democracies with respect to the promotion and protection of human rights.

2. Factors and difficulties impeding the implementation of the Covenant

559. The Committee notes that the heritage of the negative aspects of the past could not be rectified overnight and that much remains to be done to make irreversible the process of introducing a multiparty democracy and strengthening the rule of law. The Committee also notes that Belarus continues to face various problems during the present period of transition that make the task of implementing civil and political rights particularly difficult. In this connection, it also notes that the Government's efforts in restructuring the existing legal system have at times been hampered by certain lacunae in national legislation as well as by continuing resort to legislation of the former regime.

3. Principal subjects of concern

560. The Committee expresses concern about the fact that certain drafts pending before the legislature do not fully conform with the provisions of the Covenant, particularly with respect to freedom of movement. Problems in this regard relate, in particular, to grounds on which passports may be issued, and to clauses dealing with exit visas, particularly in respect of holders of State secrets - which are incompatible with article 12, paragraph 3, of the Covenant. The Committee is also concerned as to the planned retention of the internal residence permit (propiska) system. The retention of the death penalty for many offences, even though limited in application, is also of concern to the Committee. The retention of the classification of persons belonging to any religion, in particular the Jewish faith, as a distinct nationality is also without justification. In many areas not covered by new legislation, much depends on the good will of the authorities, with the danger still present that the latter would be unduly influenced by certain attitudes inherited from the past.

4. Suggestions and recommendations

561. The Committee considers it to be particularly important that constitutional and legislative reforms should be expedited and that they should be in full conformity with the existing international standards enshrined in the International Covenant on Civil and Political Rights. In drafting new legislation affecting human rights, special attention should be paid to the establishment of effective judicial guarantees for the safeguard of civil and political rights. Attention should be paid in all legislation to ensure that any limitations on human rights are in strict conformity with the limitations to those rights permitted in the Covenant. Existing provisions limiting or restricting freedom of movement, including the requirement for exit visas and the clause relating to holders of State secrets, should be eliminated from pending legislation to bring it fully into conformity with article 12, paragraph 3, of the Covenant.

MONGOLIA

562. The Committee considered the third periodic report of Mongolia (CCPR/C/64/Add.2) at its 1155th to 1157th meetings, held on 16 and 17 July 1992 (see CCPR/C/SR.1155-1157). (For the composition of the delegation, see annex VIII.)

563. The report was introduced by the representative of the State party, who pointed out that since the presentation of the second periodic report Mongolia had undergone significant changes reflecting a transformed international situation. At its session in January, Mongolia's highest representative body, the Great Khural, had adopted a new constitution. This new Constitution had the support of the public at large and signalled a commitment to democratization. The Government had conducted an evaluation of the internal and external situation in order to devise appropriate measures for the development of the country and the establishment of a political order based upon the principles of humanism and social justice. Many steps had already been taken towards the improvement of the standard of living for workers and

the establishment of a market economy well integrated into the world economy. Since the presentation of its second periodic report, Mongolia had become a party to the Optional Protocol and adherence to the Convention against Torture and The Hague Convention on Civil Procedure was at present under active consideration in Parliament.

Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; and state of emergency

564. With reference to those issues, members of the Committee wished to know if there had been any change in the status of the Covenant within the Mongolian legal system brought about by the new Constitution; to what extent the provisions of the Covenant had been taken into account in the process of adopting the Constitution and amending legislation; what the relationship was between the Supreme Legislative and Executive Organs of Mongolia and what their respective roles were in so far as the implementation of the Covenant was concerned; whether the role of the Procurator's Office had changed under the new Constitution and laws; and what cases, if any, there had been during the period under review where the provisions of the Covenant were directly invoked before the courts or referred to in court decisions. Additionally, members of the Committee wished to have information on measures taken to compensate victims of past violations of human rights; the activities of the Commission on the Rehabilitation of Persons Subjected to Unlawful Repression; and the nature of compensation being offered to citizens who had suffered damage through a wrongful conviction, wrongful prosecution or wrongful detention in custody. Members of the Committee also wished to know in which respects the rights of aliens, who did not benefit from the special agreements mentioned in paragraph 9 of the report, were restricted as compared with those of citizens.

565. In addition, members of the Committee wished to know what the position of the Covenant was in regard to domestic law and whether the provisions of the Covenant prevailed in cases of conflict between the two; how the provisions of the Covenant had been publicized and disseminated; how the general public had been made aware of its rights under the Optional Protocol and what mechanism was foreseen for following up communications presented under this instrument; how recent economic and political changes had affected the equality of the sexes and what measures had been taken thus far to eliminate discrimination in this regard; and what measures had been taken to ensure freedom from discrimination on the basis of political opinion. Members of the Committee also wished to have further clarification concerning the grounds for declaring a state of emergency, and about the rights that could subsequently be suspended and those that could not be derogated from.

566. In reply, the representative of the State party noted that the provisions of the Covenant had been taken into account during the drafting of the new Constitution as well as the many new laws and regulations now coming into force. Considerable effort was being made to ensure that new legislation was drafted in conformity with the provisions of the Covenant and other international human rights instruments. With regard to the position of the Covenant in Mongolian law, the new Constitution accorded supremacy to international law over domestic law. Under article 10 of the Constitution, the provisions of international treaties were effectively incorporated into domestic law upon entry into force of the instrument concerned. Legislation

to implement this specific provision of the Constitution was being drafted at present. The Covenant had been publicized by the media and the provisions of the Optional Protocol had been published in private newspapers.

567. Victims of past violations of human rights were given redress under a law adopted in 1990. An estimated 30,000 people had been unlawfully repressed during the 1930s and the question of compensation for the victims and their families was the subject of legislation currently under consideration in Parliament. Previously, no compensation had been extended largely owing to the economic situation in the country. The office of the Public Procurator still existed under the new legal system, although his responsibilities had already changed considerably. The draft of a new law regulating the competence of the Procurator was at present under consideration in Parliament.

568. The representative pointed out that discrimination against women was prohibited by article 14 of the Constitution and that equal rights for women in Mongolia were ensured. A number of women had been recently elected to the Great Khural, serving as an indication that political rights were being exercised. Women accounted for 43 per cent of the economically active population. Attempts to deprive women of equal rights were specifically regulated by article 142 of the Penal Code. Additionally, women claiming to be victims of discrimination were able to file complaints in court. With regard to safeguarding the rights of aliens in Mongolia, bilateral treaties had been concluded by the Government with a number of countries, under the terms of which legal assistance was extended to their nationals in matters concerning civil, penal and family law. The agreements facilitated the exchange of information and provided guarantees for the protection of witnesses and the rights of the defence.

569. Martial law could be imposed in cases of external threat of war and a state of emergency could be declared by the Minister of Justice in cases such as a natural disaster. A draft law on states of emergency was currently being prepared by the Government with a view to establishing procedures and responsibilities for the eventual suspension of certain constitutional provisions in such circumstances. At the present time, there was no law providing for the derogation of the rights of citizens.

Right to life, treatment of prisoners and other detainees, and liberty and security of the person

570. With regard to those issues, members of the Committee wished to know what was meant by the statement in paragraph 14 of the report that the death penalty had been established as "an alternative to imprisonment for varying terms, not as the primary but as a secondary option"; how often and for what crimes had the death penalty been imposed and carried out since the consideration of Mongolia's second periodic report; and whether any consideration had been given to the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant. They requested further information on action taken to make the Corrective-Labour Code more humane and to bring the penitentiary system in line with the commitments entered into by Mongolia under international conventions and agreements on human rights and concerning the legal value of testimony extracted through violence or insulting treatment. Members of the Committee also wished to know the rules and regulations governing the use of firearms by the police and

security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; and what plans were being made to introduce new legal provisions that would strengthen and guarantee the right to liberty and security of the person.

571. In addition, members of the Committee wished to know whether any legislation had been adopted recently prohibiting torture; whether there were any educational programmes aimed at the elimination of torture; what measures had been taken to ensure the application of article 9 of the Covenant; whether improperly extracted evidence was admissible in court; whether the 10-day deadline for filing an appeal to the Supreme Court following a pronouncement of a death sentence was considered adequate time in which to prepare such appeals; whether habeas corpus existed in the Mongolian legal system; what was meant by the statement in paragraph 46 of the report that visa applications may be declined for reasons of "the health and dignity of society"; and what was the content of political education used to reform and rehabilitate persons convicted under the Criminal Code.

572. In reply, the representative of the State party drew attention to decrees issued in 1986 and in 1991 strictly regulating the use of firearms by the police and other security forces. Since the publication of the 1991 decree no violation of the regulations in force had been recorded. Persons arrested were informed immediately of the reasons for their arrest and members of their families were informed within 24 hours. Recourse procedures for persons convicted of an offence were guaranteed under the new Constitution but the amendments to the Penal Code required for implementing that right in practice had not yet been completed. Habeas corpus would be the subject of future legislation in Mongolia. There were at present 3,328 detainees in the Mongolian prison system, which was under the general supervision of the Office of the Procurator.

573. Under article 16 of the Constitution and article 21 of the Penal Code, the death penalty might be imposed only for the most serious crimes and was not applicable to persons under the age of 18, women, or men over the age of 60. In actual practice, the death penalty was generally commuted to imprisonment. For the period 1991-1992, only 20 men sentenced to death had been executed. During the same period, 274 homicides had been committed. Although the Government had decided to maintain the death penalty for the present time, a study of possible adherence to the Second Optional Protocol was currently being carried out in the Ministry of the Interior

574. Mongolia had recently decided to adhere to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a study was to be undertaken in Parliament concerning the Convention. Mechanisms prohibiting torture had been established under the Penal Code and compensation for victims of torture had been provided for by law. Anyone found guilty of obtaining evidence by means of violence or insults, or the threat of violence, was subject to imprisonment for up to 8 to 10 years.

Right to a fair trial

575. In regard to that issue, members of the Committee wished to have further information on any shortcomings in Mongolian legislation with respect to

article 14 of the Covenant and on any steps that had been taken to overcome them; how the independence and impartiality of the judiciary was guaranteed; and on the rights of the defence and the availability of free legal assistance to criminal defendants. Members of the Committee also wished to have more information on the judicial structure under review and know on which models Mongolia was basing the reform of its judiciary.

576. In reply, the representative of the State party stated that the independence and impartiality of the judiciary was guaranteed under articles 47 and 48 of the Constitution, which strictly prohibited interference by all other organs of the State. The legal system under the new Constitution contained many changes from the previous system. A Supreme Court had been established and the military courts of the previous system no longer existed. Provision would be made for different types of courts and, as far as possible, trials would be conducted in public. However, in actual practice, not all means were available to ensure the right to a fair trial and there were many gaps in existing law in that area. Much remained to be done to amend the relevant laws in order to harmonize them with the principles set out in the new Constitution. Additionally, the lack of adequately trained staff in the Mongolian legal service made it difficult to proceed with the reform of the judiciary. An effort was being made to identify an appropriate model for reform and seminars were being conducted to this end with specialists from other countries.

Freedom of movement and expulsion of aliens; right to privacy, freedom of religion and expression, freedom of assembly and association; the right to participate in the conduct of public affairs; and rights of persons belonging to minorities

577. With respect to those issues, members of the Committee requested clarification of the current standing of the bill governing departure from the country by Mongolian citizens and entry into the country by foreigners; the compatibility of the grounds for refusing an exit visa, mentioned in paragraph 46 of the report, with article 12 of the Covenant and the possibilities of appeal against such decisions; and of the procedures leading to an expulsion order and the remedies available to the individuals concerned. Members of the Committee wished to have further information on the constitutional provisions relating to the right of privacy and on the process of review of the Civil Code aimed at strengthening that right; on the status of the bill on the right to freedom of religion currently in preparation; on any restrictions to the freedom of assembly and association of religious communities, the use of places of worship, the publication of religious material or to the liberty of parents to ensure the religious education of their children; on the status of the preparation of the new press law; on the criteria used in prohibiting public meetings and on the recourse available against such decisions; on the procedure for registering new political parties; and on new legislation allowing trade-union pluralism and its effects. Members of the Committee also wished to know what factors and difficulties, if any, existed with respect to the implementation and enjoyment of the rights under article 27 of the Covenant; what the size was of the different minority groups in Mongolia; and how the rights of such groups under article 27 of the Covenant were guaranteed.

578. In addition, members of the Committee wished to know whether there was any procedure for appeal against an expulsion order; what the provisions were of the law currently in force regulating the right to leave and return; whether visa applications were still rejected on the basis of protecting State secrets or in the citizen's own best interests; whether restrictions existed on the movement of foreign journalists; what authority was competent to expel aliens and whether its decisions were subject to appeal; whether citizens of Mongolia were free to travel and live wherever they wished in the country; what the regulations were governing the issuance and possession of passports; how the new law governing the freedom of religion differed from the previous law; whether any measures had been taken to restore religious property that had been confiscated; and whether television and radio broadcasting was still a State monopoly. They also wished to know whether voting was compulsory; whether political parties in opposition played any role in the Government; what constituted lawful criticism of the State; whether there were procedures to appeal a refusal to license new publications; what role local authorities played in authorizing or prohibiting a meeting; what was meant by the statement in the report that a meeting or demonstration could be postponed if its aim was contrary to the "unity of the Mongolian people"; whether there were any procedures to appeal denial of permission to hold meetings; and how the rights of the Chinese minority in the country were being protected.

579. In reply, the representative of the State party said that laws regulating entry and departure were in the process of being significantly amended and that the system referred to in paragraph 46 of the report was no longer applied. The Act on the Rights and Duties of Aliens in Mongolia provided for the expulsion of aliens who harmed individuals or who carried out activities harmful to society as a whole. Although national security was still a basis for expulsion, there had been no instances of its occurrence since 1986. All restrictions on the movement of aliens had been removed but journalists were still required to apply for permission to visit certain areas. However, such permission was invariably granted and in practice, therefore, they enjoyed complete freedom of movement. Previous restrictions upon the freedom of Mongolians to move where they wished within the country had now been entirely removed.

580. Freedom of worship was guaranteed by the Constitution and a bill on that right was currently before Parliament. For the time being, a clearly outdated act remained in force. Following adoption of that act in 1934, a great deal of repression had occurred, involving the destruction of virtually all of the country's Buddhist monasteries and what amounted to pogroms against the monks. Today, however, there was no persecution at all on religious grounds. There had been no restrictions of any kind since 1990 on the freedom of assembly and association of religious communities and a number of religious schools had been established and were functioning smoothly. With regard to the right to privacy, the Civil Code was currently under review and new provisions would be included to prohibit interference in private and family life.

581. There were currently 14 political parties in Mongolia covering a broad spectrum of viewpoints. The present Government was composed of four of those parties in coalition and it was expected that another multiparty Government would be formed at the next session of the Great Khural. Parties were registered with a special body of the Supreme Court and there was at present

no right to appeal in cases of refusal. Legislation on trade union rights had been enacted in April 1991, laying down procedures for the establishment of trade unions and setting out guarantees concerning the rights of workers. There were at present nine different trade unions active in Mongolia.

582. Freedom of opinion was guaranteed under article 16 of the Constitution and new legislation was being prepared on that subject. There were no restrictions on access to foreign publications but the lack of hard currency made it difficult to acquire and import them. A bill currently before Parliament would become Mongolia's first press law once it was adopted. When the new Penal Code had been enacted in 1986, all articles restricting criticism had been eliminated and criticism had ceased to be a punishable offence.

583. A decree issued in 1990 regulating procedures on the holding of meetings and demonstrations was currently under review. Although the decree stipulated that the Executive Committee of the Khural of People's Deputies must be given advance notice of any such proposed events, it had been decided that the final decision concerning permission would be taken by the mayor of the locality concerned. There was at present no provision for remedy in the case of negative decisions, but the possibility of appealing to local courts was envisaged.

584. The new Constitution prohibits discrimination against national minorities, who represented some 22 per cent of the country's population. There were a number of cultural and linguistic institutes which were concerned with preserving the heritage of these minorities. Additionally, in areas where there were significant concentrations of Kasakhs, Mongolia's largest national minority, the Kasakh language was commonly used in schools and in the print and broadcast media.

Concluding observations by individual members

585. Members of the Committee expressed their appreciation of the useful dialogue with the representatives of the State party and observed with satisfaction that the delegation was of a high level. That was taken as an indication of the importance attached by Mongolia to meeting its obligations under the Covenant. Since the submission of its second periodic report, Mongolia had made a serious effort to comply with its obligations under the Covenant and significant progress in many areas had been made.

586. Members of the Committee noted that the reform of Mongolia's legal system and political institutions was still under way. The fact that many of those rights enshrined in the Constitution had been incorporated from the Covenant was noted with satisfaction. Concern was expressed over the fact that there still remained numerous areas where new legislation was needed to replace outdated laws and to give force to the rights recognized in the Constitution. In particular, the provisions of the Covenant needed to be more closely reflected in the new penal and criminal codes. Additionally, members expressed the view that the position occupied by the Covenant in Mongolian domestic law was generally unclear and that the Covenant should be invocable by individuals in a court of law.

587. A number of members expressed their concern over the broad wording in article 19 of the Constitution concerning the grounds for declaring a state of emergency and pointed out that the provisions of article 4 of the Covenant should be more closely followed in that regard. In particular, certain provisions of the Covenant, enumerated in article 4, paragraph 2, of the Covenant, were not subject to derogation at any time.

588. Members noted that, although freedom of expression, association and assembly was guaranteed under the Constitution, there were numerous limitations that restricted the enjoyment of those rights in actual practice. For example, some regulations governing the registration of political parties and obtaining permission for holding a public meeting did not appear to be consistent with the Covenant and recourse procedures for appealing against negative administrative decisions were inadequate or non-existent.

589. Members of the Committee welcomed the abolition of the military courts but expressed concern over certain lacunae that still needed to be addressed in legislation such as the right to a fair trial and the independence of the judiciary. It was emphasized, in that regard, that habeas corpus should be included as a part of the new system.

590. Members expressed their concern over the large number of crimes for which the death penalty could be invoked and that so many executions had in fact been carried out. In addition, it was noted that the 10-day limitation on appeals to the Supreme Court regarding the imposition of a death sentence did not allow sufficient time in which to prepare a case properly.

591. Concern was also expressed that in matters such as the criteria for the granting of exit visas, where the necessary legislative changes had not yet been made, outdated legislation was still in force. Although members noted that actual practice in Mongolia often took precedence over older existing legislation, it was pointed out that the rights recognised in the Covenant should be enshrined in the new law in the form of guarantees and that adequate recourse mechanisms should be provided.

592. The recent accession of Mongolia to the Optional Protocol was noted with satisfaction. Members underlined the importance of ensuring that the text of the Optional Protocol, as well as that of the Covenant, was widely publicised so that the general public and officials concerned were made adequately aware of the rights recognized in those instruments. It was also recommended that a mechanism be established to follow up with regard to communications submitted to the Committee under the Optional Protocol.

593. The representative of the State party assured the Committee that the views and concerns expressed by members would be taken into account during the formulation of new laws and legislation.

594. In concluding the consideration of the third periodic report of Mongolia, the Chairman thanked the delegation for its cooperation. He also hoped that the concerns of the Committee would be conveyed to the Mongolian Government and that the Committee would be ready to assist it for further promotion of human rights in the country.

Comments of the Committee

595. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

596. In accordance with that decision, at its 1173rd meeting, held on 29 July 1992, the Committee adopted the following comments.

Introduction

597. The Committee expresses its satisfaction at the timely submission of the third periodic report of Mongolia, which followed the Committee's guidelines and contained valuable information on the situation in Mongolia at the present time. The Committee appreciates, in particular, the high-level representation sent to discuss the report, which served as an indication of the importance attached by the Government of Mongolia to its obligations under the Covenant.

598. Although its dialogue with the delegation was a useful one, the Committee regrets that insufficient information was provided, both in the report and in the answers supplied by the delegation, concerning key elements in the relevant legislation currently being considered in Parliament. Numerous draft laws and decrees were cited during the course of the consideration of the report but the lack of information as to their content impaired the Committee's ability to assess their potential impact.

1. Positive aspects

599. The Committee notes with satisfaction the significant progress made, since the consideration of Mongolia's second periodic report, towards establishing and developing a legal order and democratic institutions which would promote the protection of human rights. The new Constitution has been drafted in the spirit of the Covenant and an extensive reform of the civil, criminal and penal codes is foreseen. Similarly, the Committee is encouraged by the indications of the delegation that many of the restrictive practices of the past are no longer in force. The Committee notes with particular satisfaction the recent accession of Mongolia to the Optional Protocol. Taken together, these notable developments indicate that the Government of Mongolia takes very seriously its obligations under the Covenant and is moving toward establishing a firmer legal basis for the realization of the rights contained therein.

2. Factors and difficulties impeding the application of the Covenant

600. The Committee notes that widespread economic dislocations of resources accompanying the transitions currently under way in the country have hindered the full application of the Covenant and the establishment of a new system of well-functioning democratic institutions and procedures. For example, the

lack of adequately trained staff in the Mongolian legal service has adversely affected efforts to reform the judiciary.

3. Principal subjects of concern

601. The Committee expresses its concern over the unclear position of the Covenant in Mongolian law. Measures undertaken so far to give effect to the Covenant have not gone far enough in providing judicial guarantees for each right recognized in the Covenant or towards ensuring that the Covenant can be invoked by individuals in a court of law. Similarly, the Committee is concerned about the continuing applicability of old laws and procedures which have not yet been revoked or replaced by new legislation providing guarantees and, in particular, establishing recourse procedures. With regard to a number of fundamental rights recognized in the Covenant, some requirements and limitations currently in force in Mongolian law are so broad and numerous as to restrict severely the effective exercise of such rights in actual practice. This is true, for example, in regard to the criteria for declaring a state of emergency; the criteria for refusing an application for an exit visa or passport; the requirement of prior permission for the holding of public meetings and the criteria for refusing such meetings; and the requirement that political parties be registered and the criteria for refusing registration. Additionally, the absence of adequate mechanisms to appeal against administrative decisions creates an uncertainty as to whether such fundamental rights as freedom of association, freedom of assembly and freedom of movement are fully enjoyed in actual practice. The Committee also expresses its concern over the exercise and application of the death penalty in Mongolia. Grounds for invoking the death penalty are currently too broad to be in conformity with article 6 of the Covenant and the number of executions for capital punishments is alarmingly high.

4. Suggestions and recommendations

602. The Committee recommends that the State party should ensure that the provisions of the Covenant be fully incorporated into domestic law and be able to be invoked in a court of law. The review currently in progress of present and proposed legislation, policies and administrative procedures should be based on the Covenant and other international human rights instruments in order to ensure that forthcoming changes will accord with the obligations of the State party under these instruments. In regard to the declaration of a state of emergency, the State party should ensure that applicable legislation is in conformity with the Covenant, particularly in regard to paragraph 2 of article 4. The Committee also emphasizes that the texts of the Covenant and the Optional Protocol should be widely publicized in order that the general public, the judiciary and the relevant agencies of the Government are made aware of the rights enshrined in the provisions of these instruments. Adequate training in human rights norms should be provided for attorneys and members of the judiciary as well as for police, prison and other security officials. In undertaking the implementation of these recommendations, the Committee suggests that the State party further avail itself of the Advisory Services and Technical Assistance Programme of the Centre for Human Rights.

IV. GENERAL COMMENTS OF THE COMMITTEE

Work on general comments

603. At its forty-first session, the Committee began discussion of a text updating its general comment on article 7 of the Covenant on the basis of an initial draft prepared by its working group. It considered that general comment at its 1056th, 1070th, 1076th, 1083rd, 1084th, 1088th, 1097th, 1109th and 1139th meetings during its forty-first to forty-fourth sessions, on the basis of successive drafts revised by its working groups in the light of the comments and proposals advanced by members. The Committee adopted its revised general comment on article 7 of the Covenant at the 1139th meeting, held on 3 April 1992 (see annex VI). At its 1056th, 1060th, 1122nd, 1123rd, 1124th, 1140th and 1141st meetings, during its forty-first and forty-fourth sessions, the Committee also gave extensive consideration to a text updating its general comment on article 10 of the Covenant submitted by its working groups. The Committee adopted its revised general comment on article 10 of the Covenant at the 1041st meeting, held on 6 April 1992 (see annex VI). Pursuant to the request of the Economic and Social Council, the Committee transmitted the revised general comments on articles 7 and 10 to the Council at its regular session in 1992.

604. At its 1162nd and 1166th meetings, during its forty-fifth session, the Committee began discussion of a draft general comment on article 18 of the Covenant on the basis of an initial draft prepared by its working group. The Committee also noted that the working groups which met before the forty-fourth and forty-fifth sessions had begun consideration of a draft general comment on article 25 of the Covenant.

605. At its 1167th meeting, held on 24 July 1992, the Committee decided to start preparatory work on a general comment that would address issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

606. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Of the 112 States that have ratified or acceded to the Covenant, 66 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. C). Since the Committee's last report to the General Assembly, 11 States have ratified or acceded to the Optional Protocol: Angola, Australia, Benin, Bulgaria, Chile, Cyprus, Estonia, Lithuania, Poland, the Russian Federation and Seychelles. No communication can be examined by the Committee if it concerns a State party to the Covenant that is not also a party to the Optional Protocol.

607. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (art. 5 (3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submissions from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5 (4) of the Optional Protocol, are however made public. As regards decisions declaring a communication inadmissible, which are also final, the Committee has decided that it will normally make these decisions public, substituting initials for the names of the alleged victim(s) and the author(s).

A. Progress of work

608. The Committee started its work under the Optional Protocol at its second session in 1977. Since then, 514 communications concerning 42 States parties have been registered for consideration by the Committee, including 46 placed before it at its forty-third to forty-fifth sessions, covered by the present report.

609. The status of the 514 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by views under article 5, paragraph 4, of the Optional Protocol: 138;

(b) Declared inadmissible: 155;

(c) Discontinued or withdrawn: 80;

(d) Declared admissible, but not yet concluded: 49;

(e) Pending at the pre-admissibility stage: 92.

610. In addition, the secretariat of the Committee has several hundred communications on file, in respect of which the authors have been advised that further information would be needed before their communications could be

registered for consideration by the Committee. The authors of some 100 further communications have been informed that the Committee does not intend to consider their cases, as they fall clearly outside the scope of the Covenant or appear to be frivolous.

611. Two volumes containing selected decisions of the Human Rights Committee under the Optional Protocol, from the second to the sixteenth sessions and from the seventeenth to the thiry-second sessions, respectively, have been issued.

612. During the forty-third to forty-fifth sessions, the Committee concluded consideration of 19 cases by adopting its views thereon. These are cases Nos. 205/1986 (Mikmaq v. Canada), 230/1987 (Raphael Henry v. Jamaica), 240/1987 (Willard Collins v. Jamaica), 248/1987 (Glenford Campbell v. Jamaica), 269/1987 (Delroy Prince v. Jamaica), 270/1988 and 271/1988 (Randolph Barrett and Clyde Sutcliffe v. Jamaica), 272/1988 (Alrick Thomas v. Jamaica), 276/1988 (Trevor Ellis v. Jamaica), 277/1988 (Juan Terán Jijón v. Ecuador), 283/1988 (Aston Little v. Jamaica), 289/1988 (Dieter Wolf v. Panama), 293/1988 (Horace Hibbert v. Jamaica), 319/1988 (Edgar A. Cañón García v. Ecuador), 336/1988 (Nicole Fillastre v. Bolivia), 349/1989 (Clifton Wright v. Jamaica), 395/1990 (M. Th. Sprenger v. the Netherlands), 410/1990 (Csaba Párkányi v. Hungary) and 415/1990 (Dietmar Pauger v. Austria). The texts of the views in these 19 cases are reproduced in annex IX.

613. The Committee also concluded consideration of 31 cases by declaring them inadmissible. These are cases Nos. 233/1987 (M.F. v. Jamaica), 287/1988 (O.H.C. v. Colombia), 331/1988 (G.J. v. Trinidad and Tobago), 335/1988 (M.F. v. Jamaica), 340/1988 (R.W. v. Jamaica), 347/1988 (S.G. v. France), 348/1989 (G.B. v. France), 351/1989 (N.A.J. v. Jamaica), 358/1989 (R.L. et al. v. Canada), 363/1989 (R.L.M. v. France), 367/1989 (J.J.C. v. Canada), 381/1989 (L.E.S.K. v. the Netherlands), 382/1989 (C.F. v. Jamaica), 383/1989 (H.C. v. Jamaica), 393/1990 (A.C. v. France), 394/1990 (C.B.D. v. the Netherlands), 396/1990 (M.S. v. the Netherlands), 397/1990 (P.S. v. Denmark), 398/1990 (A.M. v. Finland), 401/1990 (J.P.K. v. the Netherlands), 403/1990 (T.W.M.B. v. the Netherlands), 405/1990 (M.R. v. Jamaica), 408/1990 (W.J.H. v. the Netherlands), 439/1990 (C.L.D. v. France), 446/1991 (J.P. v. Canada), 448/1991 (H.J.H. v. the Netherlands), 457/1991 (A.I.E. v. the Libyan Arab Jamahiriya), 463/1991 (D.B.-B. v. Zaire), 483/1991 (J.v.K. and C.M.G.v.K.-S. v. the Netherlands), 486/1992 (K.C. v. Canada) and 491/1992 (J.L. v. Australia). The texts of the decisions in these 31 cases are reproduced in annex X.

614. During the period under review, 24 communications were declared admissible for examination on the merits; decisions declaring communications admissible are not made public. Consideration of seven cases was discontinued. Procedural decisions were adopted in a number of pending cases (under rules 86 and 91 of the Committee's rules of procedure or under article 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

B. Growth of the Committee's case-load under the Optional Protocol

615. As the Committee has already stated in previous annual reports, and as indicated in paragraph 22 of the present report, the increased number of

States parties to the Optional Protocol and increased public awareness of the Committee's work under the Optional Protocol have led to a substantial growth in the number of communications submitted to it. At the opening of the Committee's forty-fifth session, there were 153 cases pending. This increased workload means that the Committee can no longer examine communications as expeditiously as hitherto and highlights the urgent need to reinforce the Secretariat staff. The Human Rights Committee reiterates its request to the Secretary-General to take the necessary steps to ensure a substantial increase in the number of staff, specialized in the various legal systems, assigned to service the Committee, and wishes to record that the work under the Optional Protocol continues to suffer as a result of insufficient secretariat resources.

C. New approaches to examining communications under the Optional Protocol

616. In view of the growing case-load, the Committee has been applying new working methods to enable it to deal more expeditiously with communications under the Optional Protocol.

1. Special Rapporteur on New Communications

617. At its thirty-fifth session, the Committee decided to designate a Special Rapporteur to process new communications as they were received, i.e., between sessions of the Committee. Mrs. Rosalyn Higgins served as Special Rapporteur for a period of two years. At its forty-first session, the Committee designated Mr. Rajsoomer Lallah to succeed Mrs. Higgins for a period of one year; at the forty-fourth session, his mandate was renewed by the Committee for an additional year. Since the end of the forty-second session, the Special Rapporteur has transmitted 30 new communications to the States parties concerned under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the question of admissibility. In some cases, the Special Rapporteurs recommended to the Committee that the communications be declared inadmissible without being forwarded to the State party. The Special Rapporteur also issued requests for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure.

2. Competence of the Working Group on Communications

618. At its thirty-sixth session, the Committee decided to authorize the Working Group on Communications, consisting of five members, to adopt decisions to declare communications admissible when all the members so agreed. Failing such agreement, the Working Group would refer the matter to the Committee. It could also do so whenever it believed that the Committee itself should decide the question of admissibility. While the Working Group could not adopt decisions declaring communications inadmissible, it might make recommendations in that respect to the Committee. Pursuant to those rules, the Working Group on Communications, preceding the forty-third, forty-fourth and forty-fifth sessions of the Committee, declared 20 communications admissible.

D. Individual opinions

619. In its work under the Optional Protocol, the Committee strives to reach its decisions by consensus, without resorting to voting. However, pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, members can add their individual concurring or dissenting opinions to the Committee's views. Pursuant to rule 92, paragraph 3, members can append their individual opinions to the Committee's decisions declaring communications inadmissible.

620. During the sessions covered by the present report, individual opinions were appended to the Committee's views in cases Nos. 240/1987 (Willard Collins v. Jamaica), 270/1988 and 271/1988 (Randolph Barrett and Clyde Sutcliffe v. Jamaica), 277/1988 (Juan Terán Jijón v. Ecuador), 349/1989 (Clifton Wright v. Jamaica), 395/1990 (M. Th. Sprenger v. the Netherlands), 410/1990 (Csaba Párkányi v. Hungary) and 415/1990 (Dietmar Pauger v. Austria) and to the Committee's inadmissibility decisions in cases Nos. 347/1988 (S.G. v. France), 348/1989 (G.B. v. France) and 397/1990 (P.S. v. Denmark). An individual opinion was also appended to one decision declaring a communication admissible.

E. Issues considered by the Committee

621. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its forty-second session in 1990, the reader is referred to the Committee's annual reports for 1984 to 1991, which, *inter alia*, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports.

622. The following summary reflects further developments of issues considered during the period covered by the present report.

1. Procedural issues

(a) Author's standing (art. 1 of the Optional Protocol)

623. Under article 1 of the Optional Protocol, individuals who claim to be victims of a violation by a State party of any of the rights set forth in the Covenant may submit a communication to the Committee. In case No. 397/1990 (P.S. v. Denmark), the Committee had to consider whether the author, the divorced father of an eight-year-old boy whose custody had been given to the mother, had standing to present a claim under the Optional Protocol not only on his own behalf, but also on behalf of his son. While declaring the communication inadmissible on the ground of non-exhaustion of domestic remedies, the Committee nevertheless observed that:

> "... standing under the Optional Protocol may be determined independently of national regulations and legislation governing an individual's standing before a domestic court of law. In the present case, it is clear that T.S. cannot himself submit a complaint to the Committee; the

> relationship between father and son ... must be deemed sufficient to justify representation of T.R.S. before the Committee by his father." (annex X, sect. R, para. 5.2)

(b) No claim under article 2 of the Optional Protocol

624. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

625. Although at the admissibility stage an author does not need to prove the alleged violation, he must submit sufficient evidence in substantiation of his allegation to constitute a prima facie case. A "claim" is, therefore, not just any allegation, but an allegation supported by a certain amount of substantiating evidence. Thus, in cases where the Committee finds that the author has failed to substantiate his claim for purposes of admissibility, the Committee has held the communication inadmissible, according to rule 90 (b) of its rules of procedure, declaring that the author "has no claim under article 2 of the Optional Protocol".

626. In case No. 363/1989 (R.L.M. v. France), a French citizen of Breton origin claimed that the French educational authorities had consistently discriminated against him by denying him the possibility to teach the Breton language on a full-time basis in high schools in Brittany. The Committee dismissed the author's allegation of a violation of the right to freedom of expression as unsubstantiated and observed that, in that respect, the author had failed to advance a "claim" within the meaning of article 2 of the Optional Protocol. It further noted that the author had not seized the French judicial authorities of his grievances under article 26 of the Covenant and added that any doubts on the author's part about the effectiveness of local remedies did not absolve him from exhausting them (annex X, sect. J).

627. In cases Nos. 347/1988 (S.G. v. France) and 348/1989 (G.B. v. France), the complainants had been convicted by a French court for defacing roadsigns as part of a campaign to defend the Breton language. They claimed, inter alia, that their right to freedom of expression (art. 19 of the Covenant) had been denied. The Committee considered that the authors had failed to substantiate their claims for purposes of admissibility, and observed further that the defacing of roadsigns did not raise issues under the right of freedom of expression (annex X, sects. F and G).

628. In cases Nos. 401/1991 (J.P.K. v. the Netherlands) and 403/1991 (T.W.M.B v. the Netherlands), the complainants claimed that the requirement to do military service in an army equipped with nuclear weapons amounted to forcing them to become accomplices to the crime of genocide and crimes against peace. They alleged a violation of the right to life (art. 6 of the Covenant) and the right not to be subjected to torture (art. 7). The Committee observed that the Covenant did not preclude the institution of compulsory military service and that consequently the complainants had not substantiated any claim in respect of these articles by mere reference to the requirement to do military service (annex X, sects. T and U).

629. In case No. 439/1990 (C.L.D. v. France), the complainant claimed to be a victim of a violation of the right to a fair trial (art. 14 of the Covenant). Article 14, paragraph 3 (f), guarantees the right to have the free assistance of an interpreter if the accused in a criminal trial cannot understand or speak the language used in court. The complainant, while understanding the language used in court, preferred the use of another language and requested the assistance of an interpreter, which was refused by the judge. The Committee considered that the right to a fair trial did not imply that the accused be afforded an opportunity to express himself in the language of his choice. It therefore concluded that the complainant had failed to advance a claim under the Optional Protocol (annex X, sect. X).

(c) Competence of the Committee and incompatibility with the provisions of the Covenant (Optional Protocol, art. 3)

630. In its work under the Optional Protocol the Committee has had several occasions to point out that it is not a further court of appeal on the domestic law of States parties against whom communications are brought.

631. In case No. 331/1988 (G.J. v. Trinidad and Tobago), the author, who had been sentenced to death, had complained that the Court of Appeal, although acknowledging that there had been irregularities during the trial at first instance, had concluded that the irregularities had not affected the outcome of the trial and had dismissed the author's appeal. The Committee, after having examined the case, recalled that it was generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence and to review the interpretation of domestic law by those courts. Similarly, it was for appellate courts and not for the Committee to review the judge's attitude during the trial, unless it was apparent that the judge manifestly violated his obligations of impartiality. Accordingly, the Committee declared the communication inadmissible (annex X, sect. C).

632. Communication No. 351/1989 (N.A.J. v. Jamaica) concerned a Jamaican citizen under sentence of death. The author claimed that his trial was unfair and that a number of irregularities had occurred in its conduct. The Committee decided that the communication was inadmissible under article 3 of the Optional Protocol. It found that the allegations did not come within the scope of the Covenant under the right to a fair trial, as they related primarily to the judge's instructions to the jury and the evaluation of evidence, which were beyond the Committee's competence unless there was manifest partiality or arbitrariness on the part of the judge (annex X, sect. H).

633. In case No. 446/1991 (J.P. v. Canada), the Committee observed that the scope of protection of the right to freedom of conscience and religion, as covered by article 18 of the Covenant, did not entail a right for a conscientious objector to refuse to pay taxes, part of which would be used to defray military expenditures. It concluded that the facts as submitted did not raise issues under any of the provisions of the Covenant and declared the communication inadmissible as being incompatible with the provisions of the Covenant (annex X, sect. 25). Communication No. 483/1991 (J.v.K. and G.M.G.v.K.-S. v. the Netherlands), also concerning a refusal to pay taxes for military expenditures, was similarly declared inadmissible (annex X, sect. CC).

(d) Abuse of the right of submission

636. Under article 3 of the Optional Protocol and rule 90 (c) of its rules of procedure, the Committee shall declare inadmissible any communication that it considers to be an abuse of the right to submit a communication under the Optional Protocol.

635. In case No. 367/1989 (J.J.C. v. Canada), the author complained that the Canadian judiciary was not subject to any supervision; more particularly, he charged bias and misconduct on the part of a certain judge of the provincial court of Montreal and the Committee of Enquiry of the Conseil de la Magistrature. The Committee observed:

> "These allegations are of a sweeping nature and have not been substantiated in such a way as to show how the author qualifies as a victim within the meaning of the Optional Protocol. This situation justifies doubts about the seriousness of the author's submission and leads the Committee to conclude that it constitutes an abuse of the right of submission, pursuant to article 3 of the Optional Protocol." (annex X, sect. K, para. 5.2)

636. In case No. 448/1991 (H.J.H. v. the Netherlands), the author alleged a violation of the "presumption of innocence" (art. 14, para. 2, of the Covenant), because he was required to display a vignette on his car indicating its due registration. The Committee examined whether the facts as submitted would raise prima facie issues under any provision of the Covenant and concluded that they did not. The Committee observed:

> "that the conditions for declaring a communication admissible include, inter alia, that the claims submitted be sufficiently substantiated and do not constitute an abuse of the right of submission. The author's communication reveals that these conditions have not been met." (annex X, sect. Z, para. 4.2)

(e) The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))

637. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has already established that the rule of exhaustion applies only to the extent that these remedies are effective and available. The State party is required to give "details of the remedies which it submitted that had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977, Torres Ramírez v. Uruguay). The rule also provides that the Committee is not precluded from examining a communication if it is established that the application of the remedies in question is unreasonably prolonged.

638. However, fears about the length or the effectiveness of domestic remedies as such do not absolve individuals from the requirement of at least making an effort to exhaust them. Thus, in case No. 358/1989 (R.L. v. Canada), involving the rights of an Indian band in Canada to control its band

membership, the Committee observed that domestic remedies that might indeed prove to be effective were still open to the complainants and were in fact being used by other bands. It observed that the complainants' concern about the length of the proceedings did not absolve them from the requirement of at least making a reasonable effort to exhaust domestic remedies (annex X, sect. I).

639. In case No. 287/1988 (O.H.C. v. Colombia), the complainant claimed to have been the victim of irregular actions by members of the Colombian army who had allegedly threatened him and tortured his brother. Judicial investigations into the events complained of, however, were still pending. The Committee considered that it could not conclude that the domestic remedies in Colombia would be a priori ineffective and that difficulties in the judicial process would absolve the complainant from exhausting domestic remedies (annex X, sect. B).

640. In case No. 463/1991 (D.B.-B. v. Zaire), the complainant claimed to be a victim of violations of the Covenant by Zaire; because of the alleged violations he had fled the country. He did not use any domestic remedies before bringing his case to the Committee. The Committee considered that the complainant had not shown the existence of circumstances that would prevent him from pursuing domestic remedies in his case (annex X, sect. BB).

641. In case No. 340/1988 (R.W. v. Jamaica), the author, who had been sentenced to death, claimed to be a victim of an unfair trial. The appeal against his conviction had been dismissed in May 1985 and his petition for special leave to appeal to the Judicial Committee of the Privy Council had been dismissed in February 1989. The State party, however, claimed that the author still had constitutional remedies that he might pursue. The Committee observed that:

> "the Supreme (Constitutional) Court of Jamaica has, in recent cases, allowed applications for constitutional redress in respect of alleged breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. The Committee further observes that the author appears to have means to secure legal assistance to file a constitutional motion. In the particular circumstances of the case, the Committee finds that the constitutional remedy referred to by the State party constitutes a remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, which the author has failed to exhaust." (annex X, sect. E, para. 6.2)

642. In case No. 233/1987 (M.F. v. Jamaica), the Committee, upon request of the State party, revised an earlier decision to declare the communication admissible. After the adoption of the Committee's admissibility decision, the State party had made available to the complainant a copy of the judgement of the Court of Appeal, enabling him effectively to lodge a petition for special leave to appeal against his conviction. That being the case, the Committee considered that domestic remedies could still be pursued (annex X, sect. A).

(f) Inadmissibility *ratione temporis*

643. As at previous sessions, the Committee was faced with communications concerning events that occurred prior to the entry into force of the Optional Protocol for the State concerned. The criterion of admissibility has been whether the events have had continued effects which themselves constitute violations of the Covenant after the entry into force of the Optional Protocol.

644. In case No. 457/1991 (A.I.E. v. the Libyan Arab Jamahiriya), the author claimed to have been subjected to torture by Libyan authorities between 17 April and 15 June 1989, prior to the entry into force of the Optional Protocol for that country. In declaring the communication inadmissible, the Committee observed:

> "With regard to the application of the Optional Protocol to the Libyan Arab Jamahiriya, the Committee recalls that it entered into force on 16 August 1989. It observes that the Optional Protocol cannot be applied retroactively and concludes that the Committee is precluded *ratione temporis* from examining acts said to have occurred between 17 April and 15 June 1989, unless these acts continued or had effects after the entry into force of the Optional Protocol, constituting in themselves a violation of the Covenant." (annex X, sect. AA, para. 4.2)

645. In case No. 410/1990 (Csaba Párkányi v. Hungary), part of the communication related to pretrial detention that occurred before the entry into force of the Optional Protocol for Hungary. The Committee noted that:

> "the State party has not objected to the competence of the Committee to consider this claim, although it relates to events that occurred prior to the entry into force of the Optional Protocol for Hungary, albeit after the entry into force of the Covenant. In these specific circumstances, the Committee considers that it is not precluded from examining the case." (annex IX, sect. Q, para. 8.2)

(g) Interim measures under rule 86

646. The authors of a number of cases currently before the Committee are convicted persons who have been sentenced to death and are awaiting execution. These authors claim to be innocent of the crimes of which they were convicted and further allege that they were denied a fair hearing. In view of the urgency of the communications, the Committee has requested the States parties concerned, under rule 86 of the Committee's rules of procedure, not to carry out the death sentences while the cases are under consideration. Stays of execution have specifically been granted in this connection. No execution has taken place in these circumstances.

647. In another case, in which the author claimed to be a victim of an unfair trial, the State party was requested to postpone the author's imprisonment in view of his precarious state of health. The communication is currently under consideration.

2. Substantive issues

(a) Right to life (Covenant, art. 6)

648. Although capital punishment is not per se unlawful under the Covenant, article 6, paragraph 2, provides that a "sentence of death may be imposed only for the most serious of crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant" (emphasis added). Thus, a nexus is established between the imposition of a sentence of death and observance by State authorities of Covenant guarantees. Accordingly, in cases where the Committee found that the State party had violated article 14 of the Covenant, in that the author had been denied a fair trial and appeal, the Committee held that in the circumstances the imposition of the sentence of death also entailed a violation of article 6. In its views in case No. 230/1987 (Raphael Henry v. Jamaica) the Committee observed:

> "The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that 'the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review by a higher tribunal'." (annex IX, sect. B, para. 8.5)

649. Having concluded that the final sentence of death had been imposed without the requirements of article 14 having been fully met, the Committee found that the right protected by article 6 had been violated. Similar conclusions were reached in cases Nos. 248/1987 (Glenford Campbell v. Jamaica) and 283/1988 (Aston Little v. Jamaica).

(b) The right not to be subjected to torture (Covenant, art. 7)

650. Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In case No. 277/1988 (Juan Terán Jijón v. Ecuador), the complainant claimed that he had been subjected to torture and ill-treatment during detention, which included remaining shackled and blindfolded for five days. The Committee notes that the complainant had submitted a medical report as corroborative evidence to support his allegation; in its opinion, this evidence was sufficiently compelling to justify the conclusion that he had been subjected to treatment prohibited under article 7 of the Covenant.

651. In case No. 271/1988 (Clyde Sutcliffe v. Jamaica) the Committee stated:

> "The Committee considers that the fact of having first been beaten unconscious and then left without medical attention for almost one day, in spite of a fractured arm and other injuries, amounts to cruel and inhuman treatment within the meaning of article 7 and, therefore, also entails a violation of article 10, paragraph 1. In the Committee's view,

> it is an aggravating factor that the author was later warned against further pursuing his complaint about the matter to the judicial authorities." (annex IX, sect. F, para. 8.6)

652. A violation of article 7 was also found in cases Nos. 240/1987 (Willard Collins v. Jamaica) and 319/1988 (Edgar A. Cañón García v. Ecuador).

653. In cases Nos. 270/1988 and 271/1988 (Randolph Barrett and Clyde Sutcliffe v. Jamaica), the Committee had to determine whether prolonged judicial proceedings and concomitant prolonged periods of detention on death row may in themselves amount to cruel, inhuman and degrading treatment within the meaning of the Covenant. The Committee held that prolonged judicial proceedings did not per se constitute that kind of treatment, even if they might be a source of mental strain and tension for detained persons. This also applied to appeal and review proceedings in cases involving capital punishment, although an assessment of the particular circumstances of each case would be called for. The Committee observed:

> "In States whose judicial system provides for a review of criminal convictions and sentences, an element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies is inherent in the review of the sentence; thus, even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies. A delay of 10 years between the judgement of the Court of Appeal and that of the Judicial Committee of the Privy Council is disturbingly long. However, the evidence before the Committee indicates that the Court of Appeal rapidly produced its written judgement and that the ensuing delay in petitioning the Judicial Committee is largely attributable to the authors." (annex IX, sect. F, para. 8.4)

654. A member of the Committee submitted an individual opinion in this respect.

(c) Liberty and security of person (Covenant, art. 9)

655. Article 9 of the Covenant guarantees to everyone the right to liberty and security of person. Under paragraph 1, no one shall be subjected to arbitrary arrest or detention. Paragraph 2 prescribes that anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. In case No. 248/1987 (Glenford Campbell v. Jamaica), the Committee, while not considering that the complainant's arrest was arbitrary, found that he was not promptly informed of the charges against him. It considered that:

> "one of the most important reasons for the requirement of 'prompt' information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority. A delay from 12 December 1984 to 26 January 1985 does not meet the requirements of article 9, paragraph 2." (annex IX, sect. D, para. 6.3)

In this case, the Committee also found a violation of article 9, paragraphs 3 (the right to be brought promptly before a judge) and 4 (the right to take proceedings before a court to test the lawfulness of detention), since the complainant had no access to legal representation from December 1984 to March 1985, and was therefore not in due time afforded the opportunity to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.

656. In case No. 336/1988 (Nicole Fillastre v. Bolivia), the Committee found a violation of article 9, paragraphs 2 and 3. It observed:

> "Under article 9, paragraph 3, anyone arrested or detained on a criminal charge 'shall be entitled to trial within a reasonable time ...'. What constitutes 'reasonable time' is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice alluded to by the State party does not justify unreasonable delays in the adjudication of criminal cases. Nor does the fact that investigations into a criminal case are, in their essence, carried out by way of written proceedings, justify such delays. In the present case, the Committee has not been informed that a decision at first instance had been reached some four years after the victims' arrest. Considerations of evidence-gathering do not justify such prolonged detention. The Committee concludes that there has been, in this respect, a violation of article 9, paragraph 3." (annex IX, sect. N, para. 6.5)

657. Violations of article 9 were also found in cases Nos. 277/1988 (Juan Terán Jijón v. Ecuador), 289/1988 (Dieter Wolf v. Panama) and 319/1988 (Edgar A. Cañón García v. Ecuador).

(d) Treatment during imprisonment (Covenant, art. 10)

658. Article 10, paragraph 1, prescribes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In case No. 289/1988 (Dieter Wolf v. Panama), the author claimed that he had been ill-treated during detention and confined to a special cell, together with a mentally disturbed prisoner, who allegedly had killed several other inmates. In the same context, he stated that all his property had been stolen in prison and that he had been denied food for five days. The State party did not address the claim of maltreatment, and the Committee found that the physical ill-treatment, and the denial of food for five days did violate the author's right under article 10, paragraph 1 (annex IX, sect. K).

659. In cases Nos. 240/1987 (Willard Collins v. Jamaica), 271/1988 (Clyde Sutcliffe v. Jamaica) and 277/1988 (Juan Terán Jijón v. Ecuador), the Committee found that a violation of article 7 (see sect. (b) above) also entailed a violation of article 10, paragraph 1.

660. Paragraph 2 of article 10 gives accused persons the right to be segregated from convicted prisoners and to be subjected to separate treatment appropriate to their status as unconvicted persons. In case No. 289/1988 (Dieter Wolf v. Panama) the author was detained for a period of over a year at a penitentiary for convicted prisoners, while he was unconvicted and awaiting trial. The Committee found that this amounted to a violation of the author's right under article 10, paragraph 2 (annex IX, sect. K).

(e) Expulsion of aliens (Covenant, art. 13)

661. Article 13 of the Covenant provides that an alien lawfully in the territory of a State party may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by a competent authority.

662. In case No. 319/1988 (Edgar A. Cañón García v. Ecuador), the author, a Colombian citizen, was lawfully in the territory of Ecuador when he was arrested at his hotel by the anti-drug section of the Ecuadorian police, which delivered him to agents of the United States Drug Enforcement Agency and had him flown to the United States without a proper expulsion or extradition proceeding. The State party informed the Committee that "a thorough and meticulous investigation of the act has been conducted, which has led to the conclusion that there were indeed administrative and procedural irregularities in the expulsion of the Colombian citizen, a fact which the Government deplores and has undertaken to investigate in order to punish the persons responsible for this situation and to prevent the recurrence of similar cases in the country" (annex IX, sect. M, para. 4.1).

663. In finding a violation of the Covenant, the Committee welcomed the frank cooperation of the Government of Ecuador and requested further information from the State party on the results of all its investigations as well as on measures taken to remedy the situation.

(f) Guarantees of a fair trial (Covenant, art. 14)

664. Article 14, paragraph 1, gives everyone the right to a fair and public hearing in the determination of criminal charges against him. In case No. 289/1988 (Dieter Wolf v. Panama), the Committee observed:

> "The author claims that he was denied a fair trial; the State party has denied this allegation by generally affirming that the proceedings against Mr. Wolf complied with domestic procedural guarantees. It has not, however, contested the allegation that the author was not heard in any of the cases pending against him, nor that he was never served a properly motivated indictment. The Committee recalls that the concept of a 'fair trial' within the meaning of article 14, paragraph 1, must be interpreted as requiring a number of conditions, such as equality of arms and respect for the principle of adversary proceedings. These requirements are not respected where, as in the present case, the accused is denied the opportunity to personally attend the proceedings, or where he is unable to properly instruct his legal representative. In particular, the principle of equality of arms is not respected where the accused is not served a properly motivated indictment. In the circumstances of the case, the Committee concludes that the author's right under article 14, paragraph 1, was not respected." (annex IX, sect. K, para. 6.6)

665. In communication No. 349/1989 (Clifton Wright v. Jamaica), the Committee had to determine whether the court's failure to consider the evidence tendered by the forensic expert who had performed the post-mortem on the deceased made

the author's trial unfair within the meaning of article 14. Finding a violation of that article of the Covenant, the Committee noted that:

> "In respect of the issue of the significance of the time of death of the victim, the Committee begins by noting that the post-mortem on the deceased was performed on 1 September 1981 at approximately 1 p.m., and that the expert concluded that death had occurred 47 hours before. His estimate, which was not challenged, implied that the author was already in police custody when the deceased was shot. The information was available to the Court; given the seriousness of its implications, the Court should have brought it to the attention of the jury, even though it was not mentioned by counsel. Furthermore, even if the Judicial Committee of the Privy Council had chosen to rely on the facts relating to the post-mortem evidence, it could not have addressed the matter as it was introduced for the first time at that stage. In all the circumstances, and especially given that the trial of the author was for a capital offence, this omission must, in the Committee's view, be deemed a denial of justice. This remains so even if the placing of this evidence before the jury might not, in the event, have changed their verdict and the outcome of the case." (annex IX, sect. O, para. 8.3)

666. In communication No. 491/1992 (J.L. v. Australia), the author complained that his obligation to contribute practising fees and mandatory professional indemnity insurance premiums to the Law Institute of the State of Victoria violated his rights under article 14, as the applicable regulations had been subject to the approval of the Chief Justice of the Supreme Court of Victoria; he thus challenged the impartiality of the court. In declaring the complaint inadmissible under article 3 of the Optional Protocol, the Committee noted:

> "... that the regulation of the activities of professional bodies and the scrutiny of such regulations by the courts may raise issues, in particular under article 14 of the Covenant. More particularly, the determination of any rights or obligations in a suit at law in relation thereto entitles an author to a fair and public hearing. It is in principle for States parties to regulate or approve the activities of professional bodies, which may encompass the provision for mandatory insurance schemes ... the fact that the practice of law is governed by the Legal Profession Practice Act of 1958 and that the rules providing for a practising fee and a professional indemnity insurance will have no effect unless approved by the Chief Justice does not lead in itself to the conclusion that the court, as an institution, is not an independent and impartial tribunal ..." (annex X, sect. GE, para. 4.3)

667. Pursuant to article 14, paragraph 3 (b), accused persons must have adequate time and facilities to prepare their defence. In finding a violation of this provision, the Committee held in case No. 283/1988 (Aston Little v. Jamaica):

> "The right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial; this requirement applies to all the stages of

> the judicial proceedings. The determination of what constitutes 'adequate time' requires an assessment of the individual circumstances of each case. In the instant case, it is uncontested that the author did not have more than half an hour for consultation with counsel prior to the trial and approximately the same amount of time for consultation during the trial; it is further unchallenged that he was unable to consult with counsel prior to and during the appeal and that he was unable to instruct his representative for the appeal.
>
> "On the basis of the material placed before it, and bearing in mind particularly that this is a capital punishment case and that the author was unable to review the statements of the prosecution's witnesses with counsel, the Committee considers that the time for consultation was insufficient to ensure adequate preparation of the defence, in respect of both trial and appeal, and that the requirements of article 14, paragraph 3 (b), were not met." (annex IX, sect. J, paras. 8.3 and 8.4)

668. Pursuant to article 14, paragraph 3 (c), accused persons are to be tried without undue delay. In case No. 336/1988 (Nicole Fillastre v. Bolivia), the accused were indicted on several criminal charges on 12 September 1987; the determination of these charges had not resulted in a judgement, at first instance, nearly four years later; the State party had not shown that the complexity of the case was such as to justify this delay. The Committee concluded that article 14, paragraph 3 (c), was violated (annex IX, sect. N).

669. Article 14, paragraph 3 (d), gives every accused person the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; the provision also provides the right to have legal assistance assigned to the accused, in any case where the interests of justice so require, and without payment by the accused in any such case if he does not have sufficient means to pay for it. In finding no violation of this provision, in case No. 283/1988 (Aston Little v. Jamaica), the Committee observed that that provision did not entitle the accused to choose counsel provided to him free of charge (annex IX, sect. J).

670. In case No. 230/1987 (Raphael Henry v. Jamaica) the question at issue was whether an accused had the right to be present during the appeal although he was represented by legal counsel, albeit by substitute counsel. The Committee considered that once the author opted for representation by privately retained counsel of his own choice, any decision by this counsel relating to the conduct of the appeal, including a decision to send a substitute for the hearing and not to arrange for the author to be present, could not be attributed to the State party but instead lay within the author's responsibility. In the circumstances, the Committee found no violation (annex IX, sect. B).

671. In finding a violation of article 14, paragraph 3 (d), in case No. 248/1987 (Glenford Campbell v. Jamaica), the Committee recalled that it was axiomatic that legal assistance be made available to individuals facing a capital sentence:

> "In the present case, it is uncontested that the author instructed his lawyer to raise objections to the confessional evidence, as he claimed this was obtained through maltreatment; this was not done. This failure

> had a clear incidence on the conduct of the appeal; the written judgement of the Court of Appeal of 19 June 1987 emphasizes that no objections were raised by the defence in respect of the confessional evidence. Furthermore, although the author had specifically indicated that he wished to be present during the hearing of the appeal, he was not only absent when the appeal was heard but, moreover, could not instruct his representative for the appeal, despite his wish to do so. Taking into account the combined effect of the above-mentioned circumstances, and bearing in mind that this is a case involving the death penalty, the Committee considers that the State party should have allowed the author to instruct his lawyer for the appeal, or to represent himself at the appeal proceedings. To the extent that the author was denied effective representation in the judicial proceedings and in particular as far as his appeal is concerned, the requirements of article 14, paragraph 3 (d), have not been met." (annex IX, sect. D, para. 6.6)

672. Pursuant to paragraph 3 (e) of article 14, an accused person shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. In case No. 269/1987 (Delroy Prince v. Jamaica), the author claimed that that right had not been respected at his trial. The Committee found no violation of that provision. It noted that the trial transcript disclosed that the prosecution witnesses were in fact cross-examined by the defence, and observed:

> "The Committee is not in a position to ascertain whether the failure of the defence to call witnesses on the author's behalf was a matter of counsel's professional judgement or the result of intimidation. The material before the Committee does not disclose whether either counsel or author complained to the trial judge that potential defence witnesses were subjected to intimidation. Similarly, the Committee is unable to conclude, from the information before it, that the defence was actually denied the opportunity to call witnesses. The Committee therefore finds no violation of article 14, paragraph 3 (e), of the Covenant." (annex IX, sect. E, para. 8.2)

673. The Committee similarly did not find a violation of this provision in case No. 240/1987 (Willard Collins v. Jamaica), where it observed:

> "the Committee notes that at least two witnesses who would have been willing to testify on the author's behalf were present in the courtroom during the retrial. Notwithstanding the author's repeated requests, they were not called. As author's counsel had been privately retained, his decision not to call these witnesses cannot, however, be attributed to the State party. In the view of the Committee, counsel's failure to call defence witnesses did not violate the author's right under article 14, paragraph 3 (e)." (annex IX, sect. C., para. 8.5)

676. Paragraph 5 of article 14 gives everyone convicted of a crime the right to have his conviction and sentence reviewed by a higher tribunal according to law. The right of appeal can be effectively exercised only if there is a written judgement of a lower tribunal. In its views on communication No. 230/1987 (Raphael Henry v. Jamaica), the Committee found a violation of article 14, paragraph 5, and observed:

> "Article 14, paragraph 5, of the Covenant guarantees the right of convicted persons to have the conviction and sentence reviewed 'by a higher tribunal according to law'. In this context, the author has claimed that, because of the non-availability of the written judgement, he was denied the possibility of effectively appealing to the Judicial Committee of the Privy Council, which allegedly routinely dismisses petitions which are not accompanied by the written judgement of the lower court. In this connection, the Committee has examined the question whether article 14, paragraph 5, guarantees the right to a single appeal to a higher tribunal or whether it guarantees the possibility of further appeals when these are provided for by the law of the State concerned. The Committee observes that the Covenant does not require States parties to provide for several instances of appeal. However the words 'according to law' in article 14, paragraph 5, are to be interpreted to mean that if domestic law provides for further instances of appeal, the convicted person must have effective access to each of them. Moreover, in order to enjoy the effective use of this right, the convicted person is entitled to have, within a reasonable time, access to written judgements, duly reasoned, for all instances of appeal. Thus, while Mr. Henry did exercise a right to appeal to 'a higher tribunal' by having the judgement of the Portland Circuit Court reviewed by the Jamaican Court of Appeal, he still has a right to a higher appeal protected by article 14, paragraph 5, of the Covenant, because article 110 of the Jamaican Constitution provides for the possibility of appealing from a decision of the Jamaican Court of Appeal to the Judicial Committee of the Privy Council in London. The Committee therefore finds that Mr. Henry's right under article 14, paragraph 5, was violated by the failure of the Court of Appeal to issue a written judgement." (annex IX, sect. B, para. 8.4)

675. A similar violation was found in case No. 283/1988 (Aston Little v. Jamaica) (annex IX, sect. J).

676. Article 14, paragraph 6, gives a person who has been wrongfully convicted a right to compensation under certain circumstances. In case No. 408/1990 (W.J.H. v. the Netherlands), the author was, in March 1987, convicted of fraud and forgery; his conviction was quashed on appeal and he was finally acquitted by the Court of Appeal in May 1988. His subsequent request for compensation was rejected by the Court of Appeal in November 1988. The Committee observed that the conditions for the application of article 14, paragraph 6, were:

> "(a) A final conviction for a criminal offence;
>
> "(b) Suffering of punishment as a consequence of such conviction; and
>
> "(c) A subsequent reversal or pardon on the ground of a new or newly discovered fact showing conclusively that there has been a miscarriage of justice."

The Committee further observed that since the final decision in this case acquitted the author and since he did not suffer any punishment as the result of his earlier conviction, the author's claim was outside the scope of article 14, paragraph 6 (annex X, sect. W, para. 6.3).

(g) Freedom of conscience (Covenant, art. 18)

677. In case No. 446/1991 (J.P. v. Canada), the author had refused payment of taxes that would be used for military purposes. She invoked article 18 of the Covenant, which guarantees freedom of conscience. In declaring the communication inadmissible, the Committee observed:

> "The Committee notes that the author seeks to apply the idea of conscientious objection to the disposition by the State of the taxes it collects from persons under its jurisdiction. Although article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of the protection of this article." (annex X, sect. Y, para. 4.2)

(h) The right to take part in the conduct of public affairs (Covenant, art. 25 (a))

678. Article 25 (a) of the Covenant gives every citizen the right to take part in the conduct of public affairs, directly or through freely chosen representatives. In case No. 205/1986 (Mikmaq v. Canada), the authors, Canadian Indians belonging to the Mikmaq tribal society in Nova Scotia, Canada, complained that this right had been denied them. Since 1982, several constitutional conferences had been convened by the Prime Minister of Canada to identify and clarify the rights of the aboriginal peoples of Canada. Representatives of four national associations had been invited to represent the interest of approximately 600 aboriginal groups at the conferences, which were attended by the Prime Minister and the first ministers of the provinces. The authors had sought, unsuccessfully, to be invited to attend the conferences as representatives of the Mikmaq tribal society and argued that the failure to invite them infringed their right to take part in the conduct of public affairs, as they did not feel represented by the national associations.

679. The Committee considered that, in the light of the composition, nature and scope of the activities of the constitutional conferences, the conferences did indeed constitute "a conduct of public affairs". As to the scope of the right to take part in the conduct of public affairs, the Committee found that it was for the legal and constitutional system of States to provide for the modalities of such participation. The right could not be understood as meaning that any group, large or small, that was directly affected by a particular conduct of public affairs had the unconditional right to choose how they would participate. In the view of the Committee, the participation and representation at the Canadian constitutional conferences had not been subjected to unreasonable restrictions. Accordingly, the Committee did not find a violation of the right to take part in the conduct of public affairs (annex IX, sect. A).

(i) Non-discrimination (Covenant, art. 26)

680. Article 26 of the Covenant guarantees equality before the law and equal protection of the law without any discrimination. In its jurisprudence, the Committee has consistently expressed the view that this article does not make

all differences in treatment discriminatory; a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of that article.

681. In case No. 395/1990 (M. Th. Sprenger v. the Netherlands), the Committee found that the distinction in the enjoyment of benefits under the Health Insurance Act between married and unmarried couples was reasonable in the light of the objective differences between the two categories still existing in the Netherlands legal system. It noted the explanation of the State party that there had been no general abolition of the distinction between married persons and cohabitants, and the reasons given for the continuation of that distinction. The Committee found the differential treatment to be based on reasonable and objective grounds. In a concurring individual opinion, three Committee members stated that article 26 should not be interpreted as requiring absolute equality or non-discrimination in the field of social security legislation at all times, but should be seen as a general undertaking on the part of States parties to review regularly their legislation in order to ensure that it corresponded to the changing needs of society (annex IX, sect. P).

682. In case No. 415/1990 (Dietmar Pauger v. Austria), the Committee found that the distinction merely on the basis of sex under the Pension Act between widows and widowers, whose social circumstances were similar, amounted to discrimination in violation of the relevant article of the Covenant. It recommended that Austria should offer Mr. Pauger an appropriate remedy (annex IX, sect. R).

F. Remedies called for under the Committee's views

683. The Committee's decisions on the merits are referred to as "views" in article 5, paragraph 4, of the Optional Protocol. After the Committee has made a finding of a violation of a provision of the Covenant, it proceeds to ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee, in a case concerning the death penalty, found:

> "In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Raphael Henry, a victim of a violation of article 14, paragraph 5, and consequently of article 6, is entitled, according to article 2, paragraph 3 (a), of the Covenant, to an effective remedy, in this case entailing his release; the State party is under an obligation to take measures to ensure that similar violations do not occur in the future."

The Committee further stated that it wished to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views (case No. 230/1987 (Raphael Henry v. Jamaica), annex IX, sect. B, paras. 10 and 11).

G. Monitoring compliance with the Committee's views under the Optional Protocol

684. From its seventh session in 1979 to its forty-fifth session, the Human Rights Committee has adopted views with respect to 138 communications received under the Optional Protocol and found violations in 106. During the years, however, the Committee has only been informed by States parties in relatively few cases of any measures taken by them in pursuance of the views adopted. 10/

685. Because of the general lack of knowledge about State compliance with its views, the Committee decided at its thirty-ninth session to establish a mechanism that would permit it to seek and evaluate information concerning State compliance and designated Mr. Janos Fodor as Special Rapporteur for the follow-up of views. The measures adopted by the Committee in this respect are reproduced in annex XI to its annual report for 1990. 11/

686. In carrying out his mandate, the Special Rapporteur for the follow-up of views has requested written information from the States parties on any measures taken in pursuance of the Committee's views. The Special Rapporteur is in the process of analysing the replies received. He intends to report to the Committee at the earliest opportunity.

Notes

1/ *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40* (A/46/40).

2/ Ibid., *Thirty-second Session, Supplement No. 44* (A/32/44) and corrigendum, annex IV.

3/ Ibid., *Thirty-sixth Session, Supplement No. 40* (A/36/40), annex V.

4/ Ibid., annex VI.

5/ Ibid., *Forty-fifth Session, Supplement No. 40* (A/45/40), vol. I, para. 12.

6/ Ibid., *Forty-sixth Session, Supplement No. 40* (A/46/40), paras. 21 and 32 and annex VII.

7/ The reports and additional information of States parties are documents for general distribution and are listed in the annexes to the annual reports of the Committee; these documents, as well as the summary records of the Committee's meetings, are published in the bound volumes that are being issued under the title *Yearbook of the Human Rights Committee*, beginning with the years 1977 and 1978.

8/ *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40* (A/46/40), paras. 229-257.

9/ For the first part of the consideration by the Committee of the third periodic report of Iraq, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40* (A/46/40), paras. 618-656.

10/ See ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), paras. 391-396 and annexes XXXI-XXXIII; see also ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40), paras. 621-625; ibid., Forty-fourth Session, Supplement No. 40 (A/44/40), para. 657; ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), vol. I, paras. 636-639; and ibid., Forty-sixth Session, Supplement No. 40 (A/46/40), paras. 705-709.

11/ Ibid., Forty-fifth Session, Supplement No. 40 (A/45/40).

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocols and States that have made the declaration under article 41 of the Covenant as at 31 July 1992

A. States parties to the International Covenant on Civil and Political Rights (112)

State party	Date of receipt of the instrument of ratification, accession a/ or succession b/	Date of entry into force
Afghanistan	24 January 1983 a/	24 April 1983
Albania	4 October 1991 a/	4 January 1992
Algeria	12 September 1989	12 December 1989
Angola	10 January 1992 a/	10 April 1992
Argentina	8 August 1986	8 November 1986
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 a/	23 March 1976
Belarus	12 November 1973	23 March 1976
Belgium	21 April 1983	21 July 1983
Benin	12 March 1992 a/	12 June 1992
Bolivia	12 August 1982 a/	12 November 1982
Brazil	24 January 1992 a/	24 April 1992
Bulgaria	21 September 1970	23 March 1976
Burundi	9 May 1990 a/	9 August 1990
Cambodia	26 May 1992 a/	26 August 1992
Cameroon	27 June 1984 a/	27 September 1984
Canada	19 May 1976 a/	19 August 1976
Central African Republic	8 May 1981 a/	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 a/	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	26 March 1992 a/	26 June 1992
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 a/	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 a/	4 April 1978

State party	Date of receipt of the instrument of ratification, accession a/ or succession b/	Date of entry into force
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987 a/	25 December 1987
Estonia	21 October 1991 a/	21 January 1992
Finland	19 August 1975	23 March 1976
France	4 November 1980 a/	4 February 1981
Gabon	21 January 1983 a/	21 April 1983
Gambia	22 March 1979 a/	22 June 1979
Germany	17 December 1973	23 March 1976
Grenada	6 September 1991 a/	6 December 1991
Guatemala	6 May 1992 a/	5 August 1992
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Haiti	6 February 1991 a/	6 May 1991
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 a/	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Ireland	8 December 1989	8 March 1990
Israel	3 October 1991 a/	3 January 1992
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 a/	23 March 1976
Latvia	14 April 1992 a/	14 July 1992
Lebanon	3 November 1972 a/	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 a/	23 March 1976
Lithuania	20 November 1991 a/	20 February 1992
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 a/	23 March 1976
Malta	13 September 1990 a/	13 December 1990
Mauritius	12 December 1973 a/	23 March 1976
Mexico	23 March 1981 a/	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Nepal	14 May 1991	14 August 1991

State party	Date of receipt of the instrument of ratification, accession a/ or succession b/	Date of entry into force
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 a/	12 June 1980
Niger	7 March 1986 a/	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 June 1992 a/	10 September 1992
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Republic of Korea	10 April 1990 a/	10 July 1990
Romania	9 December 1974	23 March 1976
Russian Federation	16 October 1973	23 March 1976
Rwanda	16 April 1975 a/	23 March 1976
Saint Vincent and the Grenadines	9 November 1981 a/	9 February 1982
San Marino	18 October 1985 a/	18 January 1986
Senegal	13 February 1978	13 May 1978
Seychelles	5 May 1992 a/	5 August 1992
Slovenia	6 July 1992 b/	6 July 1992
Somalia	24 January 1990 a/	24 April 1990
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 a/	11 September 1980
Sudan	18 March 1986 a/	18 June 1986
Suriname	28 December 1976 a/	28 March 1977
Sweden	6 December 1971	23 March 1976
Switzerland	18 June 1992 a/	18 September 1992
Syrian Arab Republic	21 April 1969 a/	23 March 1976
Togo	24 May 1984 a/	24 August 1984
Trinidad and Tobago	21 December 1978 a/	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukraine	12 November 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 a/	11 September 1976
United States of America	8 June 1992	8 September 1992
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 a/	24 December 1982
Yemen	9 February 1987 a/	9 May 1987

State party	Date of receipt of the instrument of ratification, accession a/ or succession b/	Date of entry into force
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 a/	1 February 1977
Zambia	10 April 1984 a/	10 July 1984
Zimbabwe	13 May 1991 a/	13 August 1991

B. States that have made the declaration under article 41 of the Covenant (36)

State party	Valid from	Valid until
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Austria	10 September 1978	Indefinitely
Belgium	5 March 1987	Indefinitely
Canada	29 October 1979	Indefinitely
Chile	11 March 1990	Indefinitely
Congo	7 July 1989	Indefinitely
Czechoslovakia	20 March 1991	Indefinitely
Democratic People's Republic of Korea	10 April 1990	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany	28 March 1979	27 March 1996
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Malta	13 September 1990	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Poland	25 September 1990	Indefinitely
Russian Federation	1 October 1991	Indefinitely
Senegal	5 January 1981	Indefinitely
Slovenia	25 June 1991	Indefinitely

State party	Valid from	Valid until
Spain	25 January 1985	25 January 1993
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
Switzerland	18 September 1992	18 September 1997
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely
United States of America	8 September 1992	Indefinitely
Zimbabwe	20 August 1991	Indefinitely

C. States parties to the Optional Protocol (66)

State party	Date of receipt of the instrument of ratification, accession a/ or succession b/	Date of entry into force
Algeria	12 September 1989 a/	12 December 1990
Angola	10 January 1992 a/	10 April 1992
Argentina	8 August 1986 a/	8 November 1986
Australia	25 September 1991 a/	25 December 1991
Austria	10 December 1987	10 March 1988
Barbados	5 January 1973 a/	23 March 1976
Benin	12 March 1992 a/	12 June 1992
Bolivia	12 August 1982 a/	12 November 1982
Bulgaria	26 March 1992 a/	26 June 1992
Cameroon	27 June 1984 a/	27 September 1984
Canada	19 May 1976 a/	19 August 1976
Central African Republic	8 May 1981 a/	8 August 1981
Chile	28 May 1992 a/	28 August 1992
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 a/	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprus	15 April 1992	15 July 1992
Czechoslovakia	12 March 1991 a/	12 June 1991
Democratic People's Republic of Korea	10 April 1990 a/	10 July 1990
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 a/	4 April 1978
Ecuador	6 March 1969	23 March 1976
Equatorial Guinea	25 September 1987 a/	25 December 1987
Estonia	21 October 1991 a/	21 January 1992

State party	Date of receipt of the instrument of ratification, accession a/ or succession b/	Date of entry into force
Finland	19 August 1975	23 March 1976
France	17 February 1984 a/	17 May 1984
Gambia	9 June 1988 a/	9 September 1988
Hungary	7 September 1988 a/	7 December 1988
Iceland	22 August 1979 a/	22 November 1979
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Libyan Arab Jamahiriya	16 May 1989 a/	16 August 1989
Lithuania	20 November 1991 a/	20 February 1992
Luxembourg	18 August 1983 a/	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malta	13 September 1990 a/	13 December 1990
Mauritius	12 December 1973 a/	23 March 1976
Mongolia	16 April 1991 a/	16 July 1991
Nepal	14 May 1991 a/	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989 a/	26 August 1989
Nicaragua	12 March 1980 a/	12 June 1980
Niger	7 March 1986 a/	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989 a/	22 November 1989
Poland	7 November 1991 a/	7 February 1992
Portugal	3 May 1983	3 August 1983
Russian Federation	1 October 1991 a/	1 January 1992
Saint Vincent and the Grenadines	9 November 1981 a/	9 February 1982
San Marino	18 October 1985 a/	18 January 1986
Senegal	13 February 1978	13 May 1978
Seychelles	5 May 1992 a/	5 August 1992
Somalia	24 January 1990 a/	24 April 1990
Spain	25 January 1985 a/	25 April 1985
Suriname	28 December 1976 a/	28 March 1977
Sweden	6 December 1971	23 March 1976
Togo	30 March 1988 a/	30 June 1988
Trinidad and Tobago	14 November 1980 a/	14 February 1981
Ukraine	25 July 1991 a/	25 October 1991
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 a/	1 February 1977
Zambia	10 April 1984 a/	10 July 1984

D. Status of the Second Optional Protocol aiming at the abolition of the death penalty (11) c/

State party	Signature	Date of receipt of the instrument of ratification or accession a/
Australia	-	2 October 1990 a/
Austria	8 April 1991	-
Belgium	12 July 1990	-
Costa Rica	14 February 1990	-
Denmark	13 February 1990	-
Finland	13 February 1990	4 April 1991
Germany	13 February 1990	-
Honduras	10 May 1990	-
Iceland	30 January 1991	2 April 1991
Italy	13 February 1990	-
Luxembourg	13 February 1990	12 February 1992
Netherlands	9 August 1990	27 February 1991
New Zealand	22 February 1990	22 February 1990
Nicaragua	21 February 1990	-
Norway	13 February 1990	5 September 1991
Portugal	13 February 1990	17 October 1990
Romania	15 March 1990	27 February 1991
Spain	23 February 1990	11 April 1991
Sweden	13 February 1990	11 May 1990
Uruguay	13 February 1990	-
Venezuela	7 June 1990	-

Notes

a/ Accession.

b/ Succession.

c/ The Second Optional Protocol was adopted and opened for signature, ratification or accession in New York on 15 December 1989 and entered into force three months after the date of deposit with the Secretary-General of the tenth instrument of ratification or accession, that is, on 11 July 1991.

ANNEX II

Membership and officers of the Human Rights Committee, 1991-1992

A. Membership

Name of member	Country of nationality
Mr. Francisco José AGUILAR URBINA*	Costa Rica
Mr. Nisuke ANDO**	Japan
Miss Christine CHANET**	France
Mr. Vojin DIMITRIJEVIC**	Yugoslavia
Mr. Omran EL SHAFEI**	Egypt
Mr. János FODOR*	Hungary
Mr. Kurt HERNDL**	Austria
Mrs. Rosalyn HIGGINS*	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH*	Mauritius
Mr. Andreas V. MAVROMMATIS*	Cyprus
Mr. Rein A. MULLERSON*	Russian Federation
Mr. Birame NDIAYE**	Senegal
Mr. Fausto POCAR*	Italy
Mr. Julio PRADO VALLEJO**	Ecuador
Mr. Waleed SADI**	Jordan
Mr. Alejandro SERRANO CALDERA*	Nicaragua
Mr. S. Amos WAKO*	Kenya
Mr. Bertil WENNERGREN**	Sweden

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* Term expires on 31 December 1992.

** Term expires on 31 December 1994.

B. Officers

The officers of the Committee, elected for two-year terms at the 1037th meeting, held on 25 March 1991, are as follows:

Chairman: Mr. Fausto Pocar

Vice-Chairmen: Mr. Francisco José Aguilar Urbina
Mr. Vojin Dimitrijevic
Mr. S. Amos Wako (till March 1992)
Mr. Omran El Shafei (since March 1992) a/

Rapporteur: Mr. Nisuke Ando

Notes

a/ Elected at the 1122nd meeting, on 23 March 1992.

ANNEX III

Agendas of the forty-third, forty-fourth and forty-fifth sessions of the Human Rights Committee

A. Forty-third session

1. At its 1092nd meeting, on 21 October 1991, the Committee adopted the following provisional agenda (see CCPR/C/73), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its forty-third session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications under the Optional Protocol to the Covenant.
6. Preparatory activities relating to the World Conference on Human Rights.

B. Forty-fourth session

2. At its 1121st meeting, on 23 March 1992, the Committee adopted the following provisional agenda (see CCPR/C/77), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its forty-fourth session:

1. Adoption of the agenda.
2. Election of a Vice-Chairman.
3. Organizational and other matters.
4. Action by the General Assembly at its forty-sixth session:
    - (a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant;
    - (b) Effective implementation of United Nations instruments on human rights and effective functioning of bodies established pursuant to such instruments.
5. Submission of reports by States parties under article 40 of the Covenant.

6. Consideration of reports submitted by States parties under article 40 of the Covenant.

7. Consideration of communications under the Optional Protocol to the Covenant.

8. Preparatory activities relating to the World Conference on Human Rights.

C. Forty-fifth session

3. At its 1149th meeting, on 13 July 1992, the Committee adopted the following provisional agenda (see CCPR/C/78), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its forty-fifth session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 40 of the Covenant.

4. Consideration of reports submitted by States parties under article 40 of the Covenant.

5. Consideration of communications under the Optional Protocol to the Covenant.

6. Preparatory activities relating to the World Conference on Human Rights.

7. Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol.

ANNEX IV

Submission of reports and additional information by States parties under article 40 of the Covenant during the period under review a/

A. Initial reports of States parties due in 1984

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Gabon	20 April 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 15 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 7 April 1987
			(7) 1 December 1987
			(8) 6 June 1988
			(9) 21 November 1988
			(10) 10 May 1989
			(11) 12 December 1989
			(12) 15 May 1990
			(13) 23 November 1990
			(14) 17 May 1991
			(15) 21 November 1991
			(16) 25 May 1992

B. Initial reports of States parties due in 1988

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Equatorial Guinea	24 December 1988	Not yet received	(1) 10 May 1989
			(2) 12 December 1989
			(3) 15 May 1990
			(4) 23 November 1990
			(5) 17 May 1991
			(6) 21 November 1991
			(7) 25 May 1992

C. Initial reports of States parties due in 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Ireland	7 March 1991	22 June 1992	
Somalia	23 April 1991	Not yet received	(1) 21 November 1991
			(2) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Democratic People's Republic of Korea	9 July 1991	31 July 1991	-
Burundi	8 August 1991	4 November 1991	-
Malta	12 December 1991	Not yet received	(1) 25 May 1992

D. Initial reports of States parties due in 1992 (within the period under review) b/

Haiti	5 May 1992	Not yet received	-

E. Second periodic reports of States parties due in 1983

Libyan Arab Jamahiriya	4 February 1983	Not yet received	(1) 10 May 1984
			(2) 15 May 1985
			(3) 13 August 1985
			(4) 18 November 1985
			(5) 6 May 1986
			(6) 8 August 1986
			(7) 1 May 1987
			(8) 24 July 1987
			(9) 1 December 1987
			(10) 6 June 1988
			(11) 21 November 1988
			(12) 10 May 1989
			(13) 12 December 1989
			(14) 15 May 1990
			(15) 23 November 1990
			(16) 17 May 1991
			(17) 21 November 1991
			(18) 25 May 1992
Iran (Islamic Republic of)	21 March 1983	12 May 1992	-

F. Second periodic reports of States parties due in 1984

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Bulgaria	28 April 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 18 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 1 May 1987
			(7) 1 August 1987
			(8) 1 December 1987
			(9) 6 June 1988
			(10) 21 November 1988
			(11) 10 May 1989
			(12) 12 December 1989
			(13) 15 May 1990
			(14) 23 November 1990
			(15) 17 May 1991
			(16) 21 November 1991
			(17) 25 May 1992
Cyprus	18 August 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 18 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 1 May 1987
			(7) 7 August 1987
			(8) 1 December 1987
			(9) 6 June 1988
			(10) 21 November 1988
			(11) 10 May 1989
			(12) 12 December 1989
			(13) 15 May 1990
			(14) 23 November 1990
			(15) 17 May 1991
			(16) 21 November 1991
			(17) 25 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Syrian Arab Republic	18 August 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 18 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 1 May 1987
			(7) 7 August 1987
			(8) 1 December 1987
			(9) 6 June 1988
			(10) 21 November 1988
			(11) 10 May 1989
			(12) 12 December 1989
			(13) 15 May 1990
			(14) 23 November 1990
			(15) 17 May 1991
			(16) 21 November 1991
			(17) 25 May 1992

G. Second periodic reports of States parties due in 1985

New Zealand-Cook Islands	27 March 1985	Not yet received	(1) 12 December 1989
			(2) 15 May 1990
			(3) 23 November 1990
			(4) 17 May 1991
			(5) 21 November 1991
			(6) 25 May 1992
Gambia	21 June 1985	Not yet received	(1) 9 August 1985
			(2) 18 November 1985
			(3) 6 May 1986
			(4) 8 August 1986
			(5) 1 May 1987
			(6) 1 December 1987
			(7) 6 June 1988
			(8) 21 November 1988
			(9) 10 May 1989
			(10) 12 December 1989
			(11) 15 May 1990
			(12) 23 November 1990
			(13) 17 May 1991
			(14) 21 November 1991
			(15) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Suriname	2 August 1985	Not yet received	(1) 18 November 1985
			(2) 6 May 1986
			(3) 8 August 1986
			(4) 1 May 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
			(11) 23 November 1990
			(12) 17 May 1991
			(13) 21 November 1991
			(14) 25 May 1992
Venezuela	1 November 1985	19 December 1991	-

H. Second periodic reports of States parties due in 1986

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Lebanon	21 March 1986	Not yet received	(1) 10 May 1986
			(2) 8 August 1986
			(3) 1 May 1987
			(4) 13 August 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
			(11) 23 November 1990
			(12) 17 May 1991
			(13) 21 November 1991
			(14) 25 May 1992
Kenya	11 April 1986	Not yet received	(1) 10 May 1986
			(2) 8 August 1986
			(3) 1 May 1987
			(4) 1 December 1987
			(5) 6 June 1988
			(6) 21 November 1988
			(7) 10 May 1989
			(8) 12 December 1989
			(9) 15 May 1990
			(10) 23 November 1990
			(11) 17 May 1991
			(12) 21 November 1991
			(13) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Mali	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989 (8) 12 December 1989 (9) 15 May 1990 (10) 23 November 1990 (11) 17 May 1991 (12) 21 November 1991 (13) 25 May 1992
Jamaica	1 August 1986	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989 (6) 12 December 1989 (7) 15 May 1990 (8) 23 November 1990 (9) 17 May 1991 (10) 21 November 1991 (11) 25 May 1992
Netherlands-Antilles	31 October 1986	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 21 November 1991 (5) 25 May 1992

I. Second periodic reports of States parties due in 1987

Guyana	10 April 1987	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989 (6) 12 December 1989 (7) 15 May 1990 (8) 23 November 1990 (9) 17 May 1991 (10) 21 November 1991 (11) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Iceland	30 October 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989 (5) 12 December 1989 (6) 15 May 1990 (7) 23 November 1990 (8) 17 May 1991 (9) 21 November 1991 (10) 25 May 1992
Democratic People's Republic of Korea	13 December 1987	Not yet received	(1) 23 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991 (8) 21 November 1991 (9) 25 May 1992

J. Second periodic reports of States parties due in 1988

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Egypt	13 April 1988	23 March 1992	-
El Salvador c/	31 December 1988	Not yet received	(1) 10 May 1989 (2) 12 December 1989 (3) 15 May 1990 (4) 23 November 1990 (5) 17 May 1991 (6) 21 November 1991 (7) 25 May 1992

K. Second periodic reports of States parties due in 1989

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Central African Republic d/	9 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Gabon e/	20 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992
Afghanistan	23 April 1989	25 October 1991	-
L. Second periodic reports of States parties due in 1990			
Congo	4 January 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991 (4) 21 November 1991 (5) 25 May 1992
Zambia	9 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Bolivia f/	13 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Togo	23 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Cameroon	26 September 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
M. Second periodic reports of States parties due in 1991			
Viet Nam g/	31 July 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Saint Vincent and the Grenadines h/	31 October 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
N. Second periodic reports of States parties due in 1992 (within the period under review) i/			
San Marino	17 January 1992	Not yet received	(1) 25 May 1992
Niger	6 June 1992	Not yet received	-
Sudan	17 June 1992	Not yet received	-
O. Third periodic reports of States parties due in 1988			
Libyan Arab Jamahiriya j/	4 February 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1989 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991 (8) 21 November 1991 (9) 25 May 1992
Iran (Islamic Republic of)	21 March 1988	Not yet received	-
Lebanon j/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991 (8) 21 November 1991 (9) 25 May 1992
Yugoslavia	3 August 1988	10 March 1992	-
P. Third periodic reports of States parties due in 1989			
Bulgaria j/	28 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992
Romania	28 April 1989	30 July 1992	

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Cyprus j/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992
Syrian Arab Republic j/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991 (5) 21 November 1991 (6) 25 May 1992

Q. Third periodic reports of States parties due in 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Trinidad and Tobago	20 March 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991 (4) 21 November 1991 (5) 25 May 1992
New Zealand j/	27 March 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991 (4) 21 November 1991 (5) 25 May 1992
Gambia j/	21 June 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Mauritius k/	18 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Hungary	2 August 1990	28 October 1991	-
Suriname j/	2 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Denmark	1 November 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Italy	1 November 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991 (3) 21 November 1991 (4) 25 May 1992
Venezuela	1 November 1991	Not yet received	-

R. Third periodic reports of States parties due in 1991

El Salvador j/	28 February 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992
Barbados	11 April 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992
Kenya j/	11 April 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992
Mali j/	11 April 1991	Not yet received	(1) 17 May 1991 (2) 21 November 1991 (3) 25 May 1992
United Republic of Tanzania	11 April 1991	Not yet received	-
Nicaragua	11 June 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Zaire l/	31 July 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Norway	1 August 1991	28 January 1992	-
Jamaica j/	1 August 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Portugal	1 August 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Costa Rica m/	2 August 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Sri Lanka	10 September 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Netherlands	31 October 1991	Not yet received	(1) 21 November 1991 (2) 25 May 1992
Dominican Republic n/	31 October 1991	15 June 1992	
Japan	31 October 1991	16 December 1991	-
Morocco	31 October 1991	o/	-
Australia	12 November 1991	Not yet received	(1) 25 May 1992

S. Third periodic reports of States parties due in 1992 (within the period under review) p/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Jordan	22 January 1992	26 May 1992	
France	3 February 1992	Not yet received	(1) 25 May 1992
India q/	31 March 1992	Not yet received	(1) 25 May 1992
Panama r/	31 March 1992	Not yet received	(1) 25 May 1992
Guyana j/	10 April 1992	Not yet received	(1) 25 May 1992
Rwanda	10 April 1992	Not yet received	(1) 25 May 1992
Mexico	22 June 1992	23 June 1992	
Madagascar s/	31 July 1992	Not yet received	-

Notes

a/ From 26 July 1991 to 31 July 1992 (end of the forty-fifth session).

b/ For a complete list of States parties whose initial reports are due in 1992, see CCPR/C/74.

c/ At its twenty-ninth session, the Committee decided to extend the deadline for the submission of the second periodic report of El Salvador from 28 February 1986 to 31 December 1988.

d/ At its thirty-second session (794th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of the Central African Republic from 7 August 1987 to 9 April 1989.

e/ The State party's initial report has not yet been received.

f/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Bolivia from 11 November 1988 to 13 July 1990.

g/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Viet Nam from 23 December 1988 to 31 July 1991.

h/ At its thirty-eighth session (973rd meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Saint Vincent and the Grenadines from 8 February 1988 to 31 October 1991.

i/ For a complete list of States parties whose second periodic reports are due in 1992, see CCPR/C/75.

j/ The State party's second periodic report has not yet been received.

k/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Mauritius from 4 November 1988 to 18 July 1990.

l/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Zaire from 30 January 1988 to 31 July 1991.

m/ At its thirty-eighth session (973rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Costa Rica from 2 August 1990 to 2 August 1991.

n/ At its thirty-eighth session (973rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of the Dominican Republic from 3 April 1989 to 31 October 1991.

o/ Pursuant to the Committee's decision taken at its forty-third session (1112nd meeting), the new date for the submission of the third periodic report of Morocco is 31 December 1992.

p/ For a complete list of States parties whose third periodic reports are due in 1992, see CCPR/C/76.

q/ At its forty-first session (1062nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of India from 9 July 1990 to 31 March 1992.

r/ At its forty-first session (1062nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Panama from 6 June 1988 to 31 March 1992.

s/ At its forty-third session (1112nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Madagascar from 3 August 1988 to 31 July 1992.

ANNEX V

Status of reports considered during the period under review and of reports still pending before the Committee

States parties	Date due	Date of submission	Meetings at which considered
		A. Initial reports	
Niger	9 June 1987	3 May 1991	Not yet considered
Algeria	11 December 1990	15 April 1991	1125th, 1128th and 1129th (forty-fourth session)
Republic of Korea	9 July 1991	31 July 1991	1150th, 1151st, 1154th and 1173rd (forty-fifth session)
Burundi	8 August 1991	4 November 1991	Not yet considered
Ireland	7 March 1991	22 June 1992	Not yet considered
		B. Second periodic reports	
Iran (Islamic Republic of)	21 March 1983	12 May 1992	Not yet considered
Venezuela	1 November 1985	19 December 1991	Not yet considered
United Republic of Tanzania	11 April 1986	4 June 1991	Not yet considered
Morocco (resumed)	31 October 1986	22 March 1990	1094th-1096th (forty-third session)
Peru	9 April 1988	17 July 1991	1133rd-1136th and 1158th-1160th meetings (forty-fourth and forty-fifth sessions)
Egypt	13 April 1988	23 March 1992	Not yet considered
Austria	9 April 1988	10 July 1990	1098th-1100th (forty-third session)
Afghanistan	23 April 1989	25 October 1991	Not yet considered
Belgium	20 July 1989	23 May 1991	1142nd and 1143rd (forty-fourth session)

States parties	Date due	Date of submission	Meetings at which considered
Guinea	30 September 1989	30 April 1991	Not yet considered
Luxembourg	17 November 1989	23 July 1991	Not yet considered
Hungary	2 August 1990	28 October 1991	Not yet considered

C. Third periodic reports

States parties	Date due	Date of submission	Meetings at which considered
Yugoslavia	3 August 1988	10 March 1992	1144th-1147th (forty-fourth session)
Belarus	4 November 1988	4 July 1990	1151st-1153rd and 1172nd (forty-fifth session)
Romania	28 April 1989	30 July 1992	Not yet considered
Poland	27 October 1989	15 October 1990	1102nd-1105th (forty-third session)
Ecuador	4 November 1989	7 June 1990	1116th-1119th (forty-third session)
Uruguay	21 March 1990	26 March 1991	Not yet considered
Iraq (resumed)	4 April 1990	5 June 1991	1106th-1108th (forty-third session)
Mongolia	4 April 1990	29 November 1990	1155th-1157th and 1173rd (forty-fifth session)
Senegal	4 April 1990	2 April 1991	Not yet considered
Colombia	2 August 1990	13 February 1991	1136th-1139th (forty-third session)
Venezuela	1 November 1990	19 December 1991	Not yet considered
Norway	1 August 1991	28 January 1992	Not yet considered
Japan	31 October 1991	16 December 1991	Not yet considered
Dominican Republic	31 October 1991	15 June 1992	Not yet considered
Jordan	22 January 1992	26 May 1992	Not yet considered
Mexico	22 June 1992	23 June 1992	Not yet considered

States parties	Date due	Date of submission	Meetings at which considered
D. Additional information submitted subsequent to the examination of initial reports by the Committee			
Kenya a/	4 May 1982		Not yet considered
Gambia a/	5 June 1984		Not yet considered
E. Additional information submitted subsequent to the examination of second periodic reports by the Committee			
Peru	22 and 23 June 1992		1158th-1160th (forty-fifth session)
F. Core documents received from States parties to the Covenant b/			
Austria			Not yet considered
Belgium			1142nd and 1143rd (forty-fourth session)
Ecuador			Not yet considered
Luxembourg			Not yet considered
Norway			Not yet considered
Spain			Not yet considered
Sweden			Not yet considered
United Kingdom of Great Britain and Northern Ireland			Not yet considered
Uruguay			Not yet considered
Venezuela			Not yet considered
Hungary			Not yet considered
Mexico			Not yet considered
Romania			Not yet considered

Notes

a/ At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with the State party's second periodic report.

b/ Core documents received from States parties under the consolidated guidelines for the initial part of the reports of States parties are to be considered by the treaty bodies, including the Committee, together with the State party's substantive report.

ANNEX VI

General comments adopted under article 40, paragraph 4, of the International Covenant on Civil and Political Rights a/

A. General comment No. 20 (44) (art. 7) b/, c/

1. This general comment replaces general comment No. 7 (16) reflecting and further developing it.

2. The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

3. The text of article 7 allows no limitation. The Committee reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.

4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.

5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. As the Committee has stated in its general comment No. 6 (16), article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.

7. Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.

8. The Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

9. In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.

10. The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.

11. In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

12. It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

13. States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.

14. Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedures that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

15. The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

B. General comment No. 21 (44) (art. 10) d/, e/

1. This general comment replaces general comment No. 9 (16) reflecting and further developing it.

2. Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.

3. Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of

liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

4. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

5. States parties are invited to indicate in their reports to what extent they are applying the relevant United Nations standards applicable to the treatment of prisoners: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (1982).

6. The Committee recalls that reports should provide detailed information on national legislative and administrative provisions that have a bearing on the right provided for in article 10, paragraph 1. The Committee also considers that it is necessary for reports to specify what concrete measures have been taken by the competent authorities to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty. States parties should include in their reports information concerning the system for supervising penitentiary establishments, the specific measures to prevent torture and cruel, inhuman or degrading treatment, and how impartial supervision is ensured.

7. Furthermore, the Committee recalls that reports should indicate whether the various applicable provisions form an integral part of the instruction and training of the personnel who have authority over persons deprived of their liberty and whether they are strictly adhered to by such personnel in the discharge of their duties. It would also be appropriate to specify whether arrested or detained persons have access to such information and have effective legal means enabling them to ensure that those rules are respected, to complain if the rules are ignored and to obtain adequate compensation in the event of a violation.

8. The Committee recalls that the principle set forth in article 10, paragraph 1, constitutes the basis for the more specific obligations of States parties in respect of criminal justice, which are set forth in article 10, paragraphs 2 and 3.

9. Article 10, paragraph 2 (a), provides for the segregation, save in exceptional circumstances, of accused persons from convicted ones. Such segregation is required in order to emphasise their status as unconvicted persons who at the same time enjoy the right to be presumed innocent as stated in article 14, paragraph 2. The reports of States parties should indicate how

the separation of accused persons from convicted persons is effected and explain how the treatment of accused persons differs from that of convicted persons.

10. As to article 10, paragraph 3, which concerns convicted persons, the Committee wishes to have detailed information on the operation of the penitentiary system of the State party. No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner. States parties are invited to specify whether they have a system to provide assistance after release and to give information as to its success.

11. In a number of cases, the information furnished by the State party contains no specific reference either to legislative or administrative provisions or to practical measures to ensure the re-education of convicted persons. The Committee requests specific information concerning the measures taken to provide teaching, education and re-education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside.

12. In order to determine whether the principle set forth in article 10, paragraph 3, is being fully respected, the Committee also requests information on the specific measures applied during detention, e.g., how convicted persons are dealt with individually and how they are categorized, the disciplinary system, solitary confinement and high-security detention and the conditions under which contacts are ensured with the outside world (family, lawyer, social and medical services, non-governmental organizations).

13. Moreover, the Committee notes that in the reports of some States parties no information has been provided concerning the treatment accorded to accused juvenile persons and juvenile offenders. Article 10, paragraph 2 (b), provides that accused juvenile persons shall be separated from adults. The information given in reports shows that some States parties are not paying the necessary attention to the fact that this is a mandatory provision of the Covenant. The text also provides that cases involving juveniles must be considered as quickly as possible. Reports should specify the measures taken by States parties to give effect to that provision. Lastly, under article 10, paragraph 3, juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned, such as shorter working hours and contact with relatives, with the aim of furthering their reformation and rehabilitation. Article 10 does not indicate any limits of juvenile age. While this is to be determined by each State party in the light of relevant social, cultural and other conditions, the Committee is of the opinion that article 6, paragraph 5, suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice. States should give relevant information about the age groups of persons treated as juveniles. In that regard, States parties are invited to indicate whether they are applying the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules (1987).

Notes

a/ For the nature and purpose of the general comments, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction. For a description of the history of the method of work, the elaboration of general comments and their use, see ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 541-557. For the text of the general comments already adopted by the Committee, see ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII; ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI; ibid., Fortieth Session, Supplement No. 40 (A/40/40), annex VI; ibid., Forty-first Session, Supplement No. 40 (A/41/40), annex VI; ibid., Forty-third Session, Supplement No. 40 (A/43/40), annex VI; ibid., Forty-fourth Session, Supplement No. 40 (A/44/40), annex VI; and ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), annex VI. Also issued in documents CCPR/C/21/Rev.1 and CCPR/C/21/Rev.1/Add.1-3.

b/ Adopted by the Committee at its 1138th meeting (forty-fourth session), on 3 April 1992.

c/ The number in parenthesis indicates the session at which the general comment was adopted.

d/ Adopted by the Committee at its 1141st meeting (forty-fourth session), on 6 April 1992.

e/ The number in parenthesis indicates the session at which the general comment was adopted.

ANNEX VII

Special decisions by the Human Rights Committee concerning reports of particular States parties

A. Yugoslavia a/

The Human Rights Committee,

Noting that the third periodic report of Yugoslavia was due for submission to the Committee on 3 August 1988,

Taking into consideration the recent and current events in Yugoslavia that have affected human rights protected under the International Covenant on Civil and Political Rights,

Acting under article 40, paragraph 1 (b), of that Covenant,

1. Decides to request the Government of Yugoslavia to submit its third periodic report as soon as possible and not later than 31 January 1992 for discussion by the Committee at its forty-fourth session in March/April 1992;

2. Requests the Secretary-General to bring this decision to the attention of the Government of Yugoslavia.

B. Peru b/

The Human Rights Committee,

Having considered the second periodic report of Peru on 31 March and 1 April 1992, during its forty-fourth session in New York,

Taking note of the Peruvian delegation's request that the Government of Peru be permitted to answer in writing, within a period of three weeks, a number of questions raised by members of the Committee so that the Committee may conclude the consideration of the report during its forty-fifth session,

Taking into consideration the recent events in Peru that affect human rights protected under the International Covenant on Civil and Political Rights,

Acting under article 40, paragraph 1 (b), of that Covenant,

1. Decides to request the Government of Peru to submit, together with the above-mentioned answers, a supplementary report relating to events occurring subsequent to the consideration of the report, in particular in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant, for discussion by the Committee during its forty-fifth session in July 1992 at Geneva;

2. Requests the Secretary-General to bring this decision to the attention of the Government of Peru.

Notes

[a] Adopted by the Human Rights Committee at its forty-third session (1112th meeting), on 4 November 1991.

[b] Adopted by the Human Rights Committee at its forty-fourth session (1148th meeting), on 10 April 1992.

ANNEX VIII

List of States parties' delegations that participated in the consideration of their respective reports by the Human Rights Committee at its forty-third, forty-fourth and forty-fifth sessions

MOROCCO	Representative:	H.E. Mr. El Ghali Benhima Ambassador Permanent Representative of Morocco to the United Nations Office at Geneva
	Advisers:	Mr. Chaouki Serghini Governor-Director of Management Training, Codification and Public Freedoms Ministry of the Interior
		Mr. Ali Atmani Judge Ministry of Justice
		Mr. Mohamed Laghmari Counsellor Permanent Mission of Morocco to the United Nations Office at Geneva
AUSTRIA	Representative:	Mr. Klaus Berchtold Director Constitutional Service, Federal Chancellery
	Advisers:	Mr. Roland Miklau Director General Federal Ministry of Justice
		Mr. Wolf Szymanski Director Federal Ministry of Interior Affairs
		Mr. Christian Strohal Minister Deputy Permanent Representative Permanent Mission of Austria to the United Nations Office at Geneva
POLAND	Representative:	Mrs. Jadwiga Skorzewska-Losiak Under-Secretary of State Ministry of Justice
	Advisers:	Mr. Zdzislaw Kedzia Counsellor Minister Plenipotentiary Permanent Mission of Poland to the United Nations Office at Geneva

POLAND (continued)		Mr. Wlodzimierz Ryms Director of Legal Department Ministry of Justice
		Mr. Kazimierz Jarzabek Deputy Director of the Department of Administration of Justice and Public Notaries Ministry of Justice
IRAQ	Representative:	Mr. Dhari Khalil Mahmood Director General Ministry of Justice
	Advisers:	Mr. Basil Yousif Advocate Member of the National Committee for Human Rights
		Mr. Hameed Ali Abid Oor Second Secretary Ministry of Foreign Affairs
		Mr. Khalid Marmoos Khalaf Ministry of Foreign Affairs
ECUADOR	Representative:	H.E. Mr. Gonzalo Ortíz Crespo Secretary-General of the Federal Administration
	Alternate Representative:	H.E. Mr. Gustavo Medina López Attorney-General
	Advisers:	H.E. Mr. Eduardo Santos Ambassador Permanent Representative of Ecuador to the United Nations Office at Geneva
		Mr. Santiago Apunte Franco First Secretary Permanent Mission of Ecuador to the United Nations Office at Geneva
ALGERIA	Representative:	Mr. Benamara Noureddine Director of Research in the Ministry of Justice Adviser to the Supreme Court
	Adviser:	Mr. Sahraoui Hocine Counsellor Permanent Mission of Algeria to the United Nations

PERU **(at the forty-fourth session)**	**Representative:**	Mrs. Patricia Vargas Rodríguez Ministry of Justice
	Adviser:	Mr. Jorge Lázaro Counsellor Permanent Mission of Peru to the United Nations
PERU **(at the forty-fifth session)**	**Representative:**	Mrs. Ada Patricia Linares Arenaza Ministry of Justice
	Advisers:	Mrs. Rosa Esther Silva y Silva Alternate Permanent Representative Permanent Mission of Peru to the United Nations Office at Geneva
		Mr. Antonio García Revilla First Secretary Permanent Mission of Peru to the United Nations Office at Geneva
COLOMBIA	**Representative:**	Mr. Manuel José Cepeda Presidential Adviser for the Development of the Constitution
	Alternate Representative:	Mr. Jorge Orlando Melo Presidential Adviser for Human Rights
BELGIUM	**Representative:**	Mr. Claude Debrulle Director of Administration Ministry of Justice
YUGOSLAVIA	**Representative:**	Mr. Miodrag Mitic Adviser to the Federal Secretary for Foreign Affairs
	Advisers:	Mr. Milos Strugar Counsellor Permanent Mission of Yugoslavia to the United Nations
		Mr. Dragan Zupanjevac Counsellor Permanent Mission of Yugoslavia to the United Nations
REPUBLIC OF KOREA	**Representative:**	H.E. Mr. Park, Soo Gil Ambassador Permanent Mission of the Republic of Korea to the United Nations Office at Geneva
	Advisers:	Mr. Moon, Bong Joo Counsellor Permanent Mission of the Republic of Korea to the United Nations Office at Geneva

REPUBLIC OF KOREA (*continued*)		Mr. Chung, Dal Ho Director Human Rights Division II Ministry of Foreign Affairs
		Mr. Yoo, Kook Hyun Director Human Rights Division Ministry of Justice
BELARUS	*Representative*:	H.E. Mr. Dashuk A.A. Minister of Justice
	Advisers:	Mr. Ogurtsov S.S. Head of the Department of the Ministry of Foreign Affairs
		Mr. Galka V.V. Second Secretary Permanent Mission of Belarus to the United Nations Office at Geneva
MONGOLIA	*Representative*:	H.E. Mr. Jugneegiin Amarsanaa Minister of Justice
	Advisers:	H.E. Mr. Schirchinjavyn Yumjav Ambassador Permanent Representative of Mongolia to the United Nations Office at Geneva
		Mr. Danzannorovyn Boldbaatar Attaché Permanent Mission of Mongolia to the United Nations Office at Geneva

ANNEX IX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 205/1986, Mikmaq people v. Canada (views adopted on 4 November 1991, at the forty-third session)

Submitted by:	Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, as officers of the Grand Council of the Mikmaq tribal society (assisted by counsel)
Alleged victims:	The authors and the Mikmaq tribal society
State party:	Canada
Date of communication:	30 January 1986 (initial submission)
Date of the decision on admissibility:	25 July 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 4 November 1991,

Having considered communication No. 205/1986, submitted to the Committee by the late Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, as officers of the Grand Council of the Mikmaq tribal society (assisted by counsel) under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

Authors

1. The authors of the communication (initial letter of 30 January 1986 and subsequent correspondence) are Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, the officers of the Grand Council of the Mikmaq tribal society in Canada. They submit the communication both as individually affected alleged victims and as trustees for the welfare and the rights of the Mikmaq people as a whole. Grand Chief Donald Marshall died in August 1991. The communication is, however, maintained by the other authors, who continue to be responsible for the conduct of the affairs of the Mikmaq Grand Council. They are represented by counsel.

Background

2.1 The authors state that the Mikmaq are a people who have lived in Mikmakik, their traditional territories in North America, since time immemorial and that they, as a free and independent nation, concluded treaties with the French and British colonial authorities, which guaranteed their separate national identity and rights of hunting, fishing and trading throughout Nova Scotia. It is further stated that for more than 100 years Mikmaq territorial and political rights have been in dispute with the Government of Canada, which claimed absolute sovereignty over Mikmakik by virtue of its independence from the United Kingdom in 1867. It is claimed, however, that the Mikmaqs' right of self-determination has never been surrendered and that their land, Mikmakik, must be considered as a Non-Self-Governing Territory within the meaning of the Charter of the United Nations.

2.2 By Constitution Act, 1982, the Government of Canada "recognized and affirmed" the "existing aboriginal and treaty rights of the aboriginal peoples of Canada" (art. 35(1), comprising the Indian, Inuit and Métis peoples of Canada (art. 35(2)). With a view to further identifying and clarifying these rights, the Constitution Act envisaged a process that would include a constitutional conference to be convened by the Prime Minister of Canada and attended by the first ministers of the provinces and invited "representatives of the aboriginal peoples of Canada". The Government of Canada and the provincial governments committed themselves to the principle that discussions would take place at such a conference before any constitutional amendments would be made and included in the Constitution of Canada in respect of matters that directly affect the aboriginal peoples, including the identification and the definition of the rights of those peoples (arts. 35(1) and 37(1) and (2)). In fact, several such conferences were convened by the Prime Minister of Canada in the following years, to which he invited representatives of 4 national associations to represent the interest of approximately 600 aboriginal groups. These national associations were the Assembly of First Nations (invited to represent primarily non-status Indians), the Métis National Council (invited to represent the Métis) and the Inuit Committee on National Issues (invited to represent the Inuit). As a general rule, constitutional conferences in Canada are attended only by elected leaders of the federal and provincial governments. The conferences on aboriginal matters constituted an exception to that rule. They focused on the matter of aboriginal self-government and whether, and in what form, a general aboriginal right to self-government should be entrenched in the Constitution of Canada. The conferences were inconclusive. No consensus was reached on any proposal and no constitutional amendments have as a result been placed before the federal and provincial legislatures for debate and vote.

2.3 While the State party indicated, on 20 February 1991, that no further constitutional conferences on aboriginal matters were scheduled, the authors point out, in comments dated 1 June 1991, that the State party's Minister of Constitutional Affairs announced, during the last week of May 1991, that a fresh round of constitutional deliberations, to which a "panel" of up to 10 aboriginal leaders would be invited, would take place later that year (1991).

Complaint

3.1 The authors sought, unsuccessfully, to be invited to attend the constitutional conferences as representatives of the Mikmaq people. The refusal of the State party to permit specific representation for the Mikmaq at the constitutional conferences is the basis of the complaint.

3.2 Initially, the authors claimed that the refusal to grant a seat at the constitutional conferences to representatives of the Mikmaq tribal society denied them the right of self-determination, in violation of article 1 of the International Covenant on Civil and Political Rights. They subsequently revised that claim and argued that the refusal also infringed their right to take part in the conduct of public affairs, in violation of article 25 (a) of the Covenant.

State party's observations and authors' comments

4.1 The State party argues that the restrictions on participation in the constitutional conferences were not unreasonable and that the conferences were not conducted in a way that was contrary to the right to participate in "the conduct of public affairs". In particular, the State party argues that "the right of citizens to participate in 'the conduct of public affairs' does not ... require direct input into the duties and responsibilities of a Government properly elected. Rather, this right is fulfilled ... when 'freely chosen representatives' conduct and make decisions on the affairs with which they are entrusted by the Constitution." The State party submits that the circumstances of the instant case "do not fall within the scope of activities which individuals are entitled to undertake by virtue of article 25 of the Covenant. This article could not possibly require that all citizens of a country be invited to a constitutional conference."

4.2 The authors contend, inter alia, that the restrictions were unreasonable and that their interests were not properly represented at the constitutional conferences. First, they stress that they could not choose which of the "national associations" would represent them and, furthermore, that they did not confer on the Assembly of First Nations (AFN) any right to represent them. Secondly, when the Mikmaqs were not allowed direct representation, they attempted, without success, to influence AFN. In particular, they refer to a 1987 hearing conducted jointly by AFN and several Canadian government departments, at which Mikmaq leaders submitted a package of constitutional proposals and protested "in the strongest terms any discussion of Mikmaq treaties at the constitutional conferences in the absence of direct Mikmaq representation". AFN, however, did not submit any of the Mikmaq position papers to the constitutional conferences nor incorporated them in its own positions.

Issues and proceedings before the Committee

5.1 The communication was declared admissible on 25 July 1990, in so far as it may raise issues under article 25 (a) of the Covenant. The Committee had earlier determined, in respect of another communication, that a claim of an alleged violation of article 1 of the Covenant cannot be brought under the Optional Protocol. a/

5.2 Article 25 of the Covenant stipulates that:

> "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
>
> "(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
>
> "(b) To vote and to be elected in genuine periodic elections ...;
>
> "(c) To have access, on general terms of equality, to public service ...".

At issue in the present case is whether the constitutional conferences constituted a "conduct of public affairs" and if so, whether the authors, or any other representatives chosen for that purpose by the Mikmaq tribal society, had the right, by virtue of article 25 (a), to attend the conferences.

5.3 The State party has informed the Committee that, as a general rule, constitutional conferences in Canada are attended only by the elected leaders of the federal and 10 provincial governments. In the light of the composition, nature and scope of activities of constitutional conferences in Canada, as explained by the State party, the Committee cannot but conclude that they do indeed constitute conduct of public affairs. The fact that an exception was made, by inviting representatives of aboriginal peoples in addition to elected representatives to take part in the deliberations of the constitutional conferences on aboriginal matters, cannot change this conclusion.

5.4 It remains to be determined what is the scope of the right of every citizen, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives. Surely, it cannot be the meaning of article 25 (a) of the Covenant that every citizen may determine either to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional system of the State party to provide for the modalities of such participation.

5.5 It must be beyond dispute that the conduct of public affairs in a democratic State is the task of representatives of the people, elected for that purpose, and public officials appointed in accordance with the law. Invariably, the conduct of public affairs affects the interest of large segments of the population or even the population as a whole, while in other instances it affects more directly the interest of more specific groups of society. Although prior consultations, such as public hearings or consultations with the most interested groups may often be envisaged by law or have evolved as public policy in the conduct of public affairs, article 25 (a) cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs. That, in fact, would be an extrapolation of the right to direct participation by the citizens, far beyond the scope of article 25 (a).

6. Notwithstanding the right of every citizen to take part in the conduct of public affairs without discrimination and without unreasonable restrictions, the Committee concludes that, in the specific circumstances of the present case, the failure of the State party to invite representatives of the Mikmaq tribal society to the constitutional conferences on aboriginal matters, which constituted conduct of public affairs, did not infringe that right of the authors or other members of the Mikmaq tribal society. Moreover, in the view of the Committee, the participation and representation at these conferences have not been subjected to unreasonable restrictions. Accordingly, the Committee is of the view that the communication does not disclose a violation of article 25 or any other provisions of the Covenant.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex IX, sect. A, communication No. 167/1984 (Lubicon Lake Band v. Canada), views adopted on 26 March 1990, para. 32.1.

B. Communication No. 230/1987, Raphael Henry v. Jamaica (views adopted on 1 November 1991, at the forty-third session)

Submitted by:	Raphael Henry (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	29 May 1987 (initial submission)
Date of decision on admissibility:	15 March 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 1991,

Having considered communication No. 230/1987, submitted to the Committee by Mr. Raphael Henry under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is Raphael Henry, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of his rights under article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was arrested in August 1984 and charged with the murder, on 12 August 1984 in the parish of Portland, Jamaica, of one Leroy Anderson. He was tried in the Portland Circuit Court in March 1985, found guilty as charged and sentenced to death on 7 March 1985. The Jamaican Court of Appeal dismissed his appeal on 28 January 1986, and the Judicial Committee of the Privy Council dismissed his petition for special leave to appeal in February 1987.

2.2 It is stated that, on 12 August 1984, the author was walking from his home to the fields along railroad tracks when he was approached and suddenly attacked by Mr. Anderson. He sought to defend himself with a machete and, in the ensuing struggle, Mr. Anderson was fatally wounded.

2.3 With respect to the circumstances of the appeal, the author states that he was not present when it was heard and dismissed. Furthermore, the legal aid lawyer assigned to represent him before the Portland Circuit Court and who was familiar with his file, did not himself argue the appeal but assigned substitute counsel to the hearing of the appeal; the author adds that the attorney who replaced his previous counsel was totally unprepared for the task. Still in the context of the appeal, the author indicates that he has experienced great difficulties in obtaining the court documents in his case; he states that by letter dated 3 September 1987 from the Registrar of the Court of Appeal, he was informed that the Court of Appeal had delivered only an oral judgement in the case.

2.4 The London law firm which represented the author before the Judicial Committee of the Privy Council observes that his petition was dismissed because of the absence of a written judgement from the Court of Appeal. In this context, it is indicated that three other Jamaican capital cases were heard and dismissed by the Judicial Committee in January 1987, all of which raised the issue of the absence of a written judgement of the Court of Appeal. In this context, counsel explains that the dismissal of the author's petition was due to his failure to meet the Judicial Committee's rules of procedure, namely, to explain the grounds on which he was seeking special leave to appeal, and to provide the Judicial Committee with copies of the decisions of the lower courts. Counsel refers, in particular, to Sections 3(1)(b) and 4(a) of the Judicial Committee (General Appellate Jurisdiction) Rules Order (1982 Statutory Instrument No. 1676).

2.5 Counsel recalls that before the Judicial Committee the author's representative requested the members of the Judicial Committee to (a) allow the petition on the ground that the failure of the Court of Appeal to provide a written judgement in a capital case was such a violation of the principles of natural justice that leave to appeal should be granted and (b) remit the case to Jamaica with a direction, under section 10 of the Judicial Committee Act of 1844, that the Court of Appeal be required to provide written reasons.

2.6 At the time, counsel advised that a constitutional motion should be filed in the Supreme Court of Jamaica. Counsel indicates that she has been exploring the possibility of filing a constitutional motion on the author's behalf; in mid-1989, the author's file was transmitted to a new counsel in London, who subsequently confirmed that, in spite of all her efforts to this effect, no Jamaican lawyer agreed to represent the author, on a no-fee basis, in any constitutional motion which it may be possible to bring before the Supreme (Constitutional) Court.

Complaint

3.1 The author claims that he was denied a fair trial and, in particular, that the preliminary investigations in the case were biased; thus, the arresting officers allegedly threatened him so as to induce him to confess the crime. It is further submitted that the prosecution witnesses were wholly unreliable, as they could not realistically have witnessed the course of events from the point where they claimed to have been standing. Finally, the trial judge is said to have failed to properly direct the jury on the issue of manslaughter and legitimate self-defence, and the issue of provocation allegedly was not put to the jury.

3.2 The author concedes that he was represented by a legal aid attorney during the trial but submits that the preparation of his defence was totally inadequate, owing to minimal opportunities to consult with his lawyer prior to the trial. In particular, the author contends that his defence was prepared on the first day of the trial. Furthermore, he claims that witnesses against him were not thoroughly cross-examined. Two witnesses were called on his behalf. They were not however, eyewitnesses, and in the author's opinion were not given the opportunity to testify under the same conditions as the witnesses against him. This was because the prosecutor allegedly ridiculed and intimidated the defence witnesses, thereby producing an incoherent testimony which undermined the credibility of the witnesses in the eyes of the jury.

3.3 The author contends that the absence of a written judgement of the Court of Appeal of Jamaica constitutes a violation of his constitutional rights, and resulted in the dismissal of his petition for special leave to appeal to the Judicial Committee. In this way, he claims, he was denied a fair review of his case, in violation of article 14, paragraph 5, of the Covenant.

3.4 It is submitted that the Court of Appeal was under a duty to provide the written reasons for its decision of 28 January 1986, especially since the Court's reasoned judgement was necessary in order to pursue a further appeal, and that failure to provide written reasons would frustrate a prospective appellant's right to exercise his right of appeal. According to counsel, there is ample support, in British and Commonwealth jurisprudence, a/ for the proposition that there is a judicial duty to give reasons for a decision, the rationale being that written reasons afford an insight into the legal or factual bases for the judgement and afford the complainant the opportunity to exercise any available right ofappeal in a timely and informed manner.

3.5 Counsel further submits that the failure of the Judicial Committee to direct the Court of Appeal to produce a written judgement and to admit his petition left Mr. Henry with no available remedy and amounted to a denial of his right of appeal against conviction and sentence, in violation of article 14, paragraph 5. By failing to exercise the powers conferred upon it by the Judicial Committee Act, the Privy Council is said to have "abdicated" its supervisory jurisdiction, conferred by Section 110, paragraph 3, of the Jamaican Constitution, to ensure that the decisions of the lower courts were not deficient.

3.6 In counsel's opinion, a recent decision of the House of Lords b/ underscores the importance of the supervisory function of courts. In this judgement it was stated that the courts are entitled, within limits, "... to subject an administrative decision to a more rigorous examination, to ensure that it is in no way flawed, according to the gravity of the issue which the decision determines. ... When an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision under challenge must surely call for the most anxious scrutiny." Although this reasoning was applied in the context of an administrative decision, counsel submits that it is applicable to the author's case. The "special responsibility" rests with the Judicial Committee in view of the very real threat of execution facing the author; in counsel's opinion, the Judicial Committee did not exercise the "anxious scrutiny" required by the particular circumstances of the author's case.

State party's observations

4. The State party, by submission of 26 October 1988, concedes that the Court of Appeal of Jamaica did not issue a written judgement in the case; the Court confined itself to an oral judgement when refusing Mr. Henry's application for leave to appeal. By further submission of 26 January 1989, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, since the author failed to take action under the Jamaican Constitution to seek enforcement of his right, under section 20 of the Constitution, to a fair trial and legal representation. In this context, it submits that the fact that an appellant has not been afforded redress by the Judicial Committee of the Privy Council does not mean that he has exhausted domestic remedies, since even after a hearing of a criminal appeal by the Privy Council, an appellant may still exercise his constitutional rights to seek redress in the Jamaican courts.

Committee's admissibility considerations and decision

5.1 At its thirty-eighth session, the Committee considered the admissibility of the communication. It took note of the State party's contention that the communication was inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution. In the circumstances of the case, the Commiteee found that recourse to the Constitutional Court under section 25 of the Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 The Committee noted that part of the author's allegations related to claims of bias on the part of the trial judge, particularly in respect of the adequacy or otherwise of the judge's instructions to the jury. The Committee reiterated that the review by it of specific instructions by the judge to the jury is beyond the scope of application of article 14 of the Covenant, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. In the circumstances, the Commiteee found that the judge's instructions did not suffer from such defects.

5.3 On 15 March 1990, accordingly, the Committee declared the communication admissible in respect of article 14, paragraphs 3 (b), (d), (e) and 5, of the Covenant.

State party's objections to the admissibility decision and the Committee's request for further clarifications

6.1 The State party, in a submission of 6 February 1991, rejects the Committee's findings on admissibility and challenges the reasoning described in paragraph 5.1 above. It argues, in particular, that the Committee's reasoning reflects a misunderstanding of the relevant Jamaican law, especially the operation of sections 25(1) and (2) of the Jamaican Constitution. The right to apply for redress under section 25(1), in the terms of the provision itself, "without prejudice to any other action with respect to the same matter which is lawfully available." The only limitation is contained in section 25(2) which, in the State party's opinion, is not applicable in the case, since the alleged breach of the right to a fair trial was not at issue in the criminal law appeal to the Court of Appeal and to the Judicial Committee:

> "... If the contravention alleged was not the subject of the criminal law appeals, ex hypothesi, those appeals could hardly constitute an adequate remedy for that contravention. The decision of the Committee would render meaningless and nugatory the hard earned constitutional rights of Jamaicans and persons in Jamaica, by its failure to distinguish between the right to appeal against the verdict and sentence of the court in a criminal case, and the 'brand new right' to apply for constitutional redress granted in 1962."

6.2 The State party submits that the admissibility decision attaches undue significance to the fact that the Jamaican courts have not yet had occasion to rule on the application of the proviso to section 25 (2) of the Constitution in circumstances where the applicant has already exhausted his criminal law appellate remedies. It notes that in the case of Noel Riley v. The Queen [A.G. (1982) 3 AER 469], Mr. Riley was able to apply, after the dismissal of his criminal appeal by the Court of Appeal and the Privy Council, to the Constitutional Court for redress and thereafter to the Court of Appeal and the Privy Council, although unsuccessfully. In the State party's opinion, this precedent illustrates that recourse to criminal law appellate remedies does not render the proviso of section 25 (2) applicable in situations where, following criminal law appeals, an individual files for constitutional redress.

6.3 Furthermore, the State party challenges the Committee's interpretation of the relationship between section 25 (2) and a fundamental human right protected by chapter three of the Jamaican Constitution: even if chapter three of the Constitution grants a specific right, such as protection from arbitrary arrest or detention (sect. 15), the Committee would test the applicability of section 25 (2) in relation to the Supreme Court's powers regarding the right of an individual to seek enforcement and protection of such a right; since that specific question had not been the subject of judicial determination by the domestic courts, the Committee would be able to conclude that the remedy does not exist and is not available. In the State party's opinion, this approach has the result that the Committee would conclude that many of the rights set forth in the Jamaican and Westminster Model Constitutions are not existent or not available, on the ground that the issue of the applicability of section 25 (2) had not been subject to judicial determination by the courts.

6.4 In respect of the absence of legal aid for the filing of constitutional motions, the State party submits that nothing in the Optional Protocol or in customary international law would support the contention that an individual is relieved of the obligation to exhaust domestic remedies on the grounds that there is no provision for legal aid and that his indigence has prevented him from resorting to an available remedy. In this connection, the State party observes that the Covenant only imposes a duty to provide legal aid in respect of criminal offences (art. 14, para. 3 (d)). Furthermore, international conventions dealing with economic, social and cultural rights do not impose an unqualified obligation on States to implement such rights: article 2 of the International Covenant on Economic, Social and Cultural Rights, for instance, provides for the progressive realization of economic rights and relates to the "capacity of implementation" of States. In the circumstances, the State party argues that it is incorrect to infer from the author's indigence and the absence of legal aid in respect of the right to apply for constitutional redress that the remedy is necessarily non-existent or unavailable. Accordingly, the State party requests the Committee to review its decision on admissibility.

6.5 In June 1991, counsel informed the Committee that the Supreme (Constitutional) Court had rendered its judgement in the cases of Earl Pratt and Ivan Morgan, on whose behalf constitutional motions had been filed earlier in 1991. c/ In the light of this judgement and in order better to appreciate whether recourse to the Supreme (Constitutional) Court was a remedy which the author had to exhaust for purposes of the Optional Protocol, the Committee adopted an interlocutory decision during its forty-second session, on 24 July 1991. In this decision, the State party was requested to provide detailed information on the availability of legal aid or free legal representation for the purpose of constitutional motions, as well as examples of such cases in which legal aid might have been granted or free legal representation might have been procured by applicants. The State party did not forward this information within the deadline set by the Committee, that is, 26 September 1991. By submission of 10 October 1991 concerning another case, it replied that no provision for legal aid in respect of constitutional motions is made under Jamaican law and that the Covenant does not require States parties to provide legal aid for this purpose.

6.6 In the above interlocutory decision, as well as the decision on admissibility, the State party was requested to also provide information and observations in respect of the substance of the author's allegations. In the interlocutory decision of 24 July 1991, the Committee added that should no comments be forthcoming from the State party on the merits of the author's allegations, it might decide to give due consideration to those allegations. In spite of the Committee's requests, the State party did not provide any information and observations in respect of the substance of the author's allegations.

Post-admissibility proceedings and examination of merits

7.1 In the light of the above, the Committee decides to proceed with its consideration of the communication. It has taken note of the State party's request that it review its decision on admissibility, in the light of the arguments outlined in paragraphs 6.1 to 6.4 above.

7.2 The State party argues that the proviso to section 25 (2) of the Jamaican Constitution cannot apply in the case, as the alleged breach of the right to a fair trial was not the subject-matter of the appeals to the Court of Appeal and the Judicial Committee. Based on the material placed before the Committee by the author, this statement would appear to be incorrect. The author's notice of appeal, dated 11 March 1985, clearly refers to "unfair trial" as one of the grounds of appeal. If the Court of Appeal did not examine this ground - and there is no means of ascertaining whether it did, since it delivered only an oral judgement - the responsibility does not lie with the author, and it cannot be argued that he did not attempt to exhaust local remedies in respect of this issue. Furthermore, the issue of whether or not a particular claim was the subject of a criminal appeal should not necessarily depend upon the semantic expression given to a claim, but on its underlying reasons. Looked at from this broader perspective, Mr. Henry was in fact also complaining to the Judicial Committee of the Privy Council that his trial had been unfair, in violation of section 20 of the Jamaican Constitution. Furthermore, the courts of every State party should ex officio test whether the lower court proceedings observed all the guarantees of a fair trial, a fortiori in capital punishment cases.

7.3 The Committee recalls that, by submission of 10 October 1991 in a different case, the State party indicated that legal aid was not provided for constitutional motions. In the view of the Committee, this supports the finding made in its decision on admissibility, that a constitutional motion is not an available remedy which must be exhausted for purposes of the Optional Protocol. In this context, the Committee observes that it is not the author's indigence which absolves him from pursuing constitutional remedies, but the State party's unwillingness or inability to provide legal aid for this purpose.

7.4 The State party claims that it has no obligation under the Covenant to make legal aid available in respect of constitutional motions, as such motions do not involve the determination of a criminal charge, as required by article 14, paragraph 3 (d), of the Covenant. But the issue before the Committee has not been raised in the context of article 14, paragraph 3 (d), but only in the context of whether domestic remedies have been exhausted.

7.5 Moreover, the Committee notes that the author was arrested in 1984, tried and convicted in 1985 and that his appeal was dismissed in 1986. The Committee deems that for purposes of article 5, paragraph 2 (b), of the Optional Protocol, a further appeal to the Supreme (Constitutional) Court would, in the circumstances of the case, entail an unreasonable prolongation of the application of domestic remedies.

7.6 For the above reasons, the Committee maintains that a constitutional motion does not constitute a remedy which is both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Accordingly, there is no reason to reverse the decision on admissibility of 15 March 1990.

8.1 With respect to the alleged violation of article 14 of the Covenant, four issues are before the Committee: (a) whether the author had adequate time for the preparation of his defence; (b) whether he could have witnesses on his behalf examined under the same conditions as the witnesses against him; (c) whether the author's legal representation before the Court of Appeal was in conformity with that required under article 14, paragraph 3 (d); and (d) whether any volation of the Covenant ensued from the Court of Appeal's failure to issue a written judgement after dismissing his appeal.

8.2 In respect of the first claim, the State party has not denied the author's claim that he did not have adequate time for the preparation of his defence, that his opportunities to consult with counsel prior to the trial were minimal, and that his defence actually was prepared on the first day of the trial. The Committee cannot ascertain, however, whether the court actually denied counsel adequate time for the preparation of the defence. Similarly, the Committee cannot ascertain whether the prosecution witnesses were not properly cross-examined because of objections on the part of the court or because of a professional judgement made by author's counsel. In the circumstances, the mateiral before the Committee does not suffice for a finding of a violation of article 14, paragraphs 3 (b) and (e).

8.3 As to Mr. Henry's representation before the Court of Appeal, the Committee reaffirms that it is axiomatic that legal assistance must be available to a convicted prisoner under sentence of death. This applies to all the stages of the judicial proceedings. In Mr. Henry's case, it is uncontested that legal counsel was available to him for the appeal: the appeal form, dated 11 March 1985, reveals that the author did not wish to be represented before the Court of Appeal by a court-appointed lawyer, but by counsel of his own choice, whose services he had the mean to secure, and that he wished to attend the hearing of the appeal. What is at issue is whether the author had the right to be present during the appeal although he was represented by legal counsel, albeit by substitute counsel. The Committee considers that once the author opted for representation by counsel of his choice, any decision by this counsel relating to the conduct of the appeal, including a decision to send a substitute to the hearing and not to arrange for the author to be present, cannot be attributed to the State party but instead lies within the author's responsibility; in the circumstances, the latter cannot claim that the fact that he was absent during the hearing of the appeal constituted a violation of the Covenant. Accordingly, the Committee concludes that article 14, paragraph 3 (d), has not been violated.

8.4 It remains for the Committee to decide whether the failure of the Court of Appeal of Jamaica to issue a written judgement violated any of the author's rights under the Covenant. Article 14, paragraph 5, of the Covenant guarantees the right of convicted persons to have the conviction and sentence reviewed "by a higher tribunal according to law". In this context, the author has claimed that, because of the non-availability of the written judgement, he was denied the possibility of effectively appealing to the Judicial Committee of the Privy Council, which allegedly routinely dismisses petitions which are not accompanied by the written judgement of the lower court. In this connection, the Committee has examined the question whether article 14, paragraph 5, guarantees the right to a single appeal to a higher tribunal or whether it guarantees the possibility of further appeals when these are provided for by the law of the State concerned. The Committee observes that the Covenant does not require State parties to provide for several instances of appeal. However, the words "according to law" in article 14, paragraph 5, are to be interpreted to mean that if domestic law provides for further instances of appeal, the convicted person must have effective access to each of them. Moreover, in order to enjoy the effective use of this right, the convicted person is entitled to have, within a reasonable time, access to written judgements, duly reasoned, for all instances of appeal. Thus, while Mr. Henry did exercise a right to appeal to "a higher tribunal" by having the judgement of the Portland Circuit Court reviewed by the Jamaican Court of Appeal, he still has a right to a higher appeal protected by article 14, paragraph 5, of the Covenant, because article 110 of the Jamaican Constitution provides for the possibility of appealing from a decision of the Jamaican Court of Appeal to the Judicial Committee of the Privy Council in London. The Committee therefore finds that Mr. Henry's right under article 14, paragraph 5, was violated by the failure of the Court of Appeal to issue a written judgement.

8.5 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review by a higher tribunal". d/ In the present case, since the final sentence of death was passed and an important requirement set forth in article 14 was not met, it must be concluded that the right protected by article 6 of the Covenant has been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee disclose a violation of article 14, paragraph 5, and consequently of article 6 of the Covenant.

10. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Raphael Henry, a victim of a violation of article 14, paragraph 5, and consequently of article 6, is entitled, according to article 2, paragraph 3 (a), of the Covenant, to an effective remedy, in this case entailing his release; the State party is under an obligation to take measures to ensure that similar violations do not occur in the future.

11. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Eagle Trust Ltd. v. Pigot-Brown [1985] 3 All ER 119; Norton Tools Co. Ltd. v. Tewson [1973], 2 WLR 45; R. v. Immigration appeal Tribunal, ex parte Khan (Mahmud) [1983], 2 WLR 759.

b/ Bugdaycay v. Secretary of State for the Home Department [1987] 1 All ER 940.

c/ On 6 April 1989, the Human Rights Committee had adopted its views under article 5, paragraph 4, of the Optional Protocol in respect of these cases: see Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex X, sect. F.

d/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, para. 7.

C. Communication No. 240/1987, Willard Collins v. Jamaica (views adopted on 1 November 1991, at the forty-third session)

Submitted by:	Willard Collins (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	25 August 1987 (initial submission)
Date of the decision on admissibility:	2 November 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 1991,

Having considered communication No. 240/1987, submitted to the Committee by Willard Collins under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.*

Facts as presented by the author

1. The author of the communication dated 25 August 1987 is Willard Collins, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 7, 10 and 14, paragraphs 1, 2 and 3 (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author is an ex-corporal in the Jamaican police force. He was arrested on 16 June 1981 in connection with the murder, on 23 November 1980, of one Rudolph Johnson in the parish of St. Catherine, Jamaica. The prosecution contended that the author shot the victim with his service weapon because he owed him a substantial amount of money, and that he had procured the assistance of a taxi driver, one C.E., to drive him and the victim to the scene of the crime and to assist with the disposal of the body.

2.2 Initially, C.E. had been arrested on 28 November 1980 and detained in connection with the murder. Some months later, he was released upon direction of the investigating officer, one Detective Sergeant R.G., who had taken charge of the police investigations on his own initiative, in the author's opinion because he was C.E.'s brother-in-law and the father of a girl born to

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* An individual opinion submitted by Ms. Christine Chanet, Mr. K. Herndl, Mr. Aguilar Urbina and Mr. B. Wennergren is appended.

C.E.'s sister. C.E. later became the prosecution's principal witness and only purported eyewitness to the crime.

2.3 The author was initially brought before the Portland Magistrates Court in connection with his application for bail and for directions as to the most appropriate venue for the preliminary hearing. The Magistrate granted the author's application for a transfer of the venue of the preliminary hearing, as the author was well known in the Portland area and it was doubtful whether he would receive a fair trial there. More particularly, the author was well known to the business associates of the Magistrate himself and the author was known to have bad business relations with those associates. During the hearing of the application, the Magistrate allegedly said, apparently only as an aside, that if he were to try the author he would ensure that a capital sentence be pronounced.

2.4 Mr. Collins' preliminary hearing took place in Spanish Town, parish of St. Catherine, on 15 October 1981; he was ordered to stand trial for murder. Detective G., then stationed in a different parish (Kingston), nevertheless remained in charge of the police investigations.

2.5 The author's trial began in the St. Catherine Circuit Court, Spanish Town, on 7 January 1982; he was represented by F.P., Q.C., and junior counsel, A.W. In spite of the prosecution's contention that the author shot Mr. Johnson without provocation, no plausible motive for the killing could be advanced. The inference to be drawn from the prosecution's case was that Mr. Collins had sought to buy a car from a third party via the victim and that he shot Mr. Johnson to avoid paying the balance of the amount owed for the car. Throughout the proceedings, the author maintained that C.E. himself had committed the crime, and that he used the author's service weapon after removing it from the author's apartment. Mr. Collins further asserts that he never thought of not honouring his debt towards the deceased and maintains that the balance was paid pursuant to an agreement which he had arranged for his bank manager to prepare. The bank manager, D.A., confirmed this version during the first trial.

2.6 During the trial in January 1982, several witnesses, including members of the author's family, testified on the author's behalf, confirming that he was at home when the victim was believed to have been shot. Five of the 12 days of the trial were devoted to testimony of defence witnesses. At the conclusion of the trial, the jury was unable to return a verdict. The author was ordered to be retried and remanded in custody.

2.7 The retrial began in the Home Circuit Court, Kingston, on 24 October 1983. Mr. Collins was represented by H.C., Q.C. The author submits that Detective G. continued to manipulate the judicial process as well as the jurors. Justice G., who had heard previous applications on behalf of the author in the Portland Magistrates Court, was assigned to hear the retrial; the author immediately complained to counsel that the judge was biased against him, in the light of the statement referred to in paragraph 2.3 above. H.C. told him that nothing could be done about this.

2.8 The author notes that on 26 October 1983, two witnesses who were present in court and ready to testify on his behalf, Ms. B.H. and Ms. Bl.H., saw three three members of the jury board a police car driven by Detective G.Bl.H.

followed the car to a quiet lane, where she found G. and his assistant talking to the jury members, indicating that he depended on them and asking them not to let him down. A similar scene was witnessed by Bl.H. on the following day, upon which she informed counsel, in the author's presence, of the attempted jury tampering witnessed by her. H.C. promised to notify the judge but failed to do so. He was reminded of the matter on 28 October 1983, the final day of the trial, when he allegedly told Mr. Collins that it was too late to act.

2.9 Finally, the author indicates that one other witness who would have been able to provide credible testimony to the effect that C.E. was the murderer and had in fact used the author's service weapon for the killing, was prepared to give evidence on his behalf during the second trial. This witness himself states that he was available to give evidence during the first trial, but was prevented from doing so by Detective G. and C.E., who threatened to kill him and his family if he were to testify in court. As a result, this witness moved to a remote part of Jamaica. When he returned to Spanish Town, he was assaulted by a group of individuals which included C.E. In the circumstances, the witness did not attend the retrial.

2.10 On 28 October 1983, the author was found guilty as charged and sentenced to death. He states that his retrial lasted only five days because none of the witnesses who were called to give evidence on his behalf during the first trial were called to do so at the retrial. He blames this on the actions of his counsel, H.C., and of Detective G. In this context, he notes that his counsel mentioned to him that he did not wish the trial to proceed beyond Friday, 28 October, as he had other professional obligations to attend to in another part of the country at the beginning of the following week. The author further notes that the jury was sent out to consider its verdict late on a Friday afternoon, thereby putting undue pressure on it to return an early decision.

2.11 The author appealed to the Court of Appeal of Jamaica, which dismissed the appeal on 11 February 1986. He notes that he has encountered many problems in obtaining a copy of the written judgement of the Court of Appeal. As to the possibility of a petition for special leave to appeal to the Judicial Committee of the Privy Council, he notes that as leading counsel in London has opined that there is no merit in such a petition, this remedy provides no prospective avenue of redress.

2.12 As to the conditions of his detention, the author indicates that he has suffered ill-treatment on death row on several occasions. On 28 May 1990, the author was among a number of prisoners searched by approximately 60 prison warders, who not only injured the author but also forced him to undress in the presence of other inmates, warders, soldiers and policemen, contrary to Section 192, paragraph 3, of the Jamaican Prisons Act 1947. When the author sought to invoke his rights under this provision, he was subjected to severe beatings by three warders, one of whom hit him several times with a heavy riot club. His counsel complained of the treatment to the authorities and the Parliamentary Ombudsman; no follow-up on the complaint has been notified to the author or to his counsel, although the author has served notice of his desire to see the behaviour of the warders sanctioned. On several subsequent occasions, in particular on 10 September 1990 when he complained to a warder who had been interfering with his mail and sometimes withholding it altogether, the author was physically assaulted; as a result, he was injured on his hand, which required medical attention and several stitches to mend his injury.

Complaint

3.1 The author contends that the conduct of his retrial in October 1983 violated article 14, paragraphs 1, 2 and 3 (e), of the Covenant. In particular, he submits that the judge was biased against him, as manifested by his previous statement made in the Portland Magistrates Court. In the author's opinion, the appointment of the judge violated his rights to equality before the court, to a fair hearing by an impartial tribunal, and to be presumed innocent until found guilty according to law. In this context, he explains that it is a general rule of criminal procedure in Jamaica that the judge presiding over a trial should not have any prior involvement in the case, and no prior involvement with the defendant, unless such prior involvement is notified to all the parties and no objections are raised. It is further explained that the rationale for the general rule is that the presentation of the evidence at preliminary hearings in criminal cases is not subject to the same strict rules of evidence governing a trial, and that it is, accordingly, considered wrong for a trial judge to have heard evidence in those circumstances at an earlier stage of the proceedings. No such procedure was followed in the author's case.

3.2 As to the claim of jury tampering by Detective G., the author explains that although such allegations are rare in capital cases, they are not unheard of in Jamaica. In his case, Detective G. took charge of a police investigation in a matter in which he was personally involved through his family links with C.E., whom the author suspected of having killed Mr. Johnson. The author claims that G.'s tampering with jury members, including the foreman of the jury, during the retrial, as well as his intimidation of a key defence witness who might otherwise have testified on his behalf, constitute a serious violation of his rights under article 14, paragraphs 1 and 2.

3.3 The author affirms that the conduct of his defence by H.C. during the second trial, in its effect, deprived him of a fair trial and violated his right, under article 14, paragraph 3 (e), to have witnesses testify on his behalf under the same conditions as the witnesses against him. Thus, counsel did not call several witnesses who were present in court throughout the retrial and ready to testify on his behalf, including B. H. and Bl. H.; nor did he arrange for the author's bank manager to testify at the retrial, although he had given evidence at the first trial.

3.4 It is further submitted that the non-availability of the author's alibi evidence during the retrial was particularly crucial, in the light of the weakness of the prosecution's case which was based on the evidence of a witness who had initially been detained in connection with the murder and who, at the time of his testimony, had just served a prison term of 18 months for the theft of three cars. These circumstances are said to corroborate the author's claim of a violation of article 14, paragraphs 1 and 3 (e): the absence of defence evidence violated a fundamental prerequisite of a fair trial, and H.C.'s failure to ensure that defence evidence be put before the court is said to constitute a gross violation of the author's rights.

3.5 The author submits that the beatings he was subjected to on death row in May and September 1990, as well as the interference with his correspondence, constitute violations of his rights under articles 7 and 10, paragraph 1, of the Covenant. He adds that Detective G. is now in charge of crime prevention in the parish of St. Catherine, where the prison is located, and expresses fear that G. may use his position for further attacks on his integrity.

3.6 Finally, the author's detention in the death row section of St. Catherine District Prison since 28 October 1983 is said to constitute a separate violation of article 7, as the severe mental stress suffered by the author due to the continued uncertainty about his situation is not a function of legal but primarily political considerations.

3.7 As to the requirement of exhaustion of domestic remedies, counsel recalls the Committee's established jurisprudence that remedies must be not only available but also effective, and that the State party has an obligation to provide some evidence that there would be a reasonable prospect that domestic remedies would be effective. He submits that neither a petition for special leave to appeal to the Judicial Committee of the Privy Council nor a constitutional motion in the Supreme (Constitutional) Court of Jamaica would provide effective remedies.

3.8 In this context, it is submitted that the case cannot be brought within the ambit of section 110, paragraphs 1 and 2, of the Jamaican Constitution governing the modalities under which the Court of Appeal may grant leave to appeal to the Judicial Committee of the Privy Council. Firstly, at no stage in the judicial proceedings did a question as to the interpretation of the Jamaican Constitution arise, as required by section 110, paragraph 1 (c). Secondly, the general criteria for granting leave to the Privy Council in section 110, paragraph 2 (a) (a question of great general or public importance or otherwise such that it ought to be submitted to the Privy Council) were not met in the case.

3.9 As to the power of the Judicial Committee, under section 110, paragraph 3, of the Constitution, to grant special leave to appeal from a decision of the Court of Appeal, counsel affirms that any application for special leave requires the submission of a legal opinion from Leading Counsel, to the effect that there is merit in seeking leave. In the author's case, Leading Counsel, the President of the Bar Council (United Kingdom of Great Britain and Northern Ireland), has advised that the substantive issues involved do not fall within the narrow jurisdiction of the Judicial Committee. Leading Counsel considers that although there were weaknesses in the evidence against the author during his retrial, as well as in the handling of the defence case, the likelihood of the Judicial Committee to grant special leave to appeal in respect of those matters would be remote.

3.10 To petition the Judicial Committee in the current circumstances would involve discarding highly qualified legal advice that such an avenue would be inappropriate; counsel submits that since the author has diligently considered the possibility of petitioning the Judicial Committee, he should not now be penalized for accepting the advice of Leading Counsel. Finally, it is submitted that recourse to the Judicial Committee in instances in which an application is likely to fail would involve the submission of a large number of unmeritorious petitions to the Judicial Committee, with damaging consequences for the judicial procedure before that body. Such a consequence, it is submitted, cannot have been the purpose of the rule laid down in article 5 of the Optional Protocol.

3.11 Counsel further asserts that a constitutional motion in the Supreme (Constitutional) Court does not provide the author with an effective domestic remedy. In this context, he advances three arguments: firstly, section 25 of the Jamaican Constitution, which provides for the "enforcement" of the individual rights guaranteed under Chapter Three of the Constitution, including the right to a fair trial, would not provide an appropriate remedy in the circumstances of the case, as "enforcement" within the meaning of section 25 would involve ordering a second retrial which, more than 10 years after the murder of Mr. Johnson, is an impractical proposition. Secondly, it is submitted that the proviso to section 25, paragraph 2, namely that the Supreme Court shall not exercise its powers if it is satisfied that adequate means of redress for the contravention alleged are, or have been, available to the applicant, applies to the author's case. Finally, a constitutional remedy is not "available" to the author, because the State party does not grant legal aid for the purpose of filing constitutional motions in the Supreme Court, and lawyers in Jamaica are generally unwilling to argue such motions on a pro bono basis.

State party's observations

4. The State party, by submission of 20 July 1988, contends that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, since the author retains the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. It adds that it issued the written judgement of the Court of Appeal of Jamaica on 17 March 1986 and that it was available to the author and to his counsel; legal aid would be available to the author to petition the Judicial Committee pursuant to section 3, paragraph 1, of the Poor Prisoners' Defence Act.

Committee's admissibility considerations and decision

5.1 During its thirty-fourth session, the Committee considered the admissibility of the communication. With regard to the requirement of exhaustion of domestic remedies, it found that, in the circumstances, a petition for special leave to appeal to the Judicial Committee of the Privy Council did not constitute an available and effective remedy within the meaning of the Optional Protocol. Furthermore, it emphasized that unreasonably prolonged delays had been encountered in obtaining the written judgement of the Court of Appeal of Jamaica, the submission of which to the Judicial Committee was a prerequisite for an application for leave to appeal to be entertained. In Mr. Collins' case, it was undisputed that he had not received the written judgement of the Court of Appeal approximately two years after the dismissal of his appeal.

5.2 On 2 November 1988, accordingly, the Human Rights Committee declared the communication admissible.

State party's objections to the admissibility decision and the Committee's requests for further clarifications

6.1 By two submissions of 25 May 1989 and 22 February 1990, the State party rejects the Committee's findings of admissibility and challenges the reasoning described in paragraph 5.1 above. In particular, it submits that the fact that the power of the Judicial Committee of the Privy Council to grant special leave to appeal pursuant to section 110, paragraph 3, of the Constitution, is discretionary, does not relieve Mr. Collins from his obligation to pursue this remedy. It contends that:

> "[a] remedy is no less a remedy because there is, inherent in structure, a preliminary stage which must be undergone before the remedy itself becomes properly applicable. In the instant case, an application to the Privy Council for special leave [to appeal] from decisions of the Court of Appeal is considered in a judicial hearing and a determination thereon is made on grounds which are wholly judicial and reasonable. The Privy Council refuses to grant leave to appeal if it considers that there is no merit in the appeal. Therefore, where special leave was refused, the applicant cannot say [that] he has no remedy ...".

6.2 The State party criticizes the Committee's interpretation of article 5, paragraph 2 (b), of the Optional Protocol, according to which a domestic remedy must be both available and effective as "a gloss on the relevant provisions of the Optional Protocol": in the instant case, the effectiveness of the remedy must in any event be demonstrated by the power of the Judicial Committee to entertain an appeal.

6.3 The State party affirms that, even if the Judicial Committee were to dismiss the author's petition for special leave to appeal, the communication would remain inadmissible on the ground of non-exhaustion of domestic remedies, since Mr. Collins would retain the right to apply for constitutional redress in the Supreme (Constitutional) Court, alleging a violation of his right to a fair trial, protected by section 20 of the Constitution.

6.4 Considering that further information about the constitutional remedy which the State party claims remains open to Mr. Collins would assist it in the consideration of the communication, the Committee adopted an interlocutory decision during its thirty-seventh session, on 2 November 1989. In it, the State party was requested to clarify whether the Supreme (Constitutional) Court had had the opportunity to determine, pursuant to section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constituted "adequate means of redress" for individuals who claim that their right to a fair trial, as guaranteed by section 20, paragraph 1, of the Constitution, had been violated. Should the answer be in the affirmative, the State party was asked to also clarify whether the Supreme (Constitutional) Court had declined to exercise its powers under section 25, paragraph 2, in respect of such applications, on the ground that adequate means of redress were already provided for in law. By submission of 22 February 1990, the State party replied that the Supreme (Constitutional) Court had not had the opportunity to consider the issue. It reiterated its request of 25 May 1989 that the decision on admissibility be revised, citing rule 93, paragraph 4, of the Committee's rules of procedure.

6.5 In June 1991, author's counsel informed the Committee that the Supreme (Constitutional) Court had rendered its judgement in the cases of Earl Pratt and Ivan Morgan, on whose behalf constitutional motions had been filed earlier in 1991. a/ In the light of this judgement and in order better to appreciate whether recourse to the Supreme (Constitutional) Court was a remedy which the author had to exhaust for purposes of the Optional Protocol, the Committee adopted a second interlocutory decision during its forty-second session, on 24 July 1991. In this decision, the State party was requested to provide detailed information on the availability of legal aid or free legal representation for the purpose of constitutional motions, as well as examples of such cases in which legal aid might have been granted or free legal representation might have been procured by applicants. The State party did not forward this information within the deadline set by the Committee, that is, 26 September 1991. By submission of 10 October 1991 concerning another case, the State party replied that no provision for legal aid in respect of constitutional motions exists under Jamaican law and that the Covenant does not oblige the State party to provide legal aid for this purpose.

6.6 In both of the above interlocutory decisions, as well as by note verbale dated 18 April 1990 addressed to it by the Committee's secretariat, the State party was requested to also provide information and observations in respect of the substance of the author's allegations. In its interlocutory decision of 24 July 1991, the Committee added that, should no comments be forthcoming from the State party on the merits of the author's allegations, it might decide to give due consideration to these allegations.

6.7 In spite of the Committee's repeated requests and reminders, the State party did not provide detailed information and observations in respect of the substance of the author's allegations. In this respect, it merely observed, by submission of 4 September 1990, that the facts as submitted by Mr. Collins seek to raise issues of facts and evidence in the case which the Committee has no competence to evaluate, adducing in support of its contention a decision adopted by the Human Rights Committee in November 1989. b/

Post-admissibility proceedings and examination of merits

7.1 In the light of the above, the Committee decides to proceed with its consideration of the communication. The Committee has taken note of the State party's position, formulated after the decision on admissibility, and takes the opportunity to expand upon its admissibility findings.

7.2 The Committee has considered the State party's argument that the fact that the power of the Judicial Committee of the Privy Council to grant leave to appeal, pursuant to section 110, paragraph 3, of the Jamaican Constitution, is limited, does not absolve an applicant from availing himself of this remedy.

7.3 The Committee appreciates that the discretionary element in the Judicial Committee's power to grant special leave to appeal pursuant to section 110, paragraph 3, does not in itself relieve the author of a communication under the Optional Protocol of his obligation to pursue this remedy. However, for the reasons set out below, the Committee believes that the present case does not fall within the competence of the Judicial Committee, as also contended by leading counsel in the case.

7.4 In determining whether to grant leave to appeal to the Judicial Committee, the Court of Appeal of Jamaica must generally ascertain, under section 110, paragraphs 1 (c) and 2 (a), of the Jamaican Constitution, whether the proceedings involve a question as to the interpretation of the Jamaican Constitution or a question of great general or public importance or otherwise such that it should be submitted to the Privy Council. Pursuant to the powers conferred upon it by section 110, paragraph 3, the Judicial Committee applies similar considerations. In granting special leave to appeal, the Judicial Committee is concerned with matters of public interest arising out of the interpretation of legal issues in a case, such as the rules governing identification procedures. There is no precedent to support the conclusion that the Judicial Committee would consider issues of alleged irregularities in the administration of justice, or that it would consider itself competent to inquire into the conduct of a criminal case. Such matters, however, are central to the author's complaint, which does not otherwise raise legal issues of general or public interest. In this context, the Committee notes that the evaluation of evidence and the summing up of relevant legal issues by the judge was neither arbitrary nor amounted to a denial of justice and that the judgement of the Court of Appeal clearly addressed the grounds of appeal.

7.5 In the particular circumstances of the case, therefore, the Committee finds that a petition for leave to appeal to the Judicial Committee of the Privy Council would have no prospect of success; accordingly, it does not constitute an effective remedy within the meaning of the Optional Protocol.

7.6 Similar considerations apply to the author's possibility of obtaining the redress sought by applying for constitutional redress in the Supreme (Constitutional) Court. A remedy is not "available" within the meaning of the Optional Protocol where, as in the instant case, no legal aid is made available in respect of constitutional motions, and no lawyer is willing to represent the author for this purpose on a pro bono basis. The Committee further reiterates that in capital punishment cases, legal aid should not only be made available; it should also enable counsel to prepare his client's defence in circumstances that can ensure justice. c/

7.7 For the reasons set out above, the Committee finds that a petition for special leave to appeal to the Judicial Committee of the Privy Council and a constitutional motion in the Supreme (Constitutional) Court are not remedies that the author would have to exhaust for purposes of the Optional Protocol. It therefore concludes that there is no reason to reverse its decision on admissibility of 2 November 1988.

8.1 With respect to the alleged violations of the Covenant, four issues are before the Committee: (a) whether the conduct of the author's retrial by a judge with a previous involvement in the case violated the author's rights under article 14, paragraphs 1 and 2, of the Covenant; (b) whether the alleged tampering with members of the jury by the investigating officer, and the alleged intimidation of witnesses by the same officer, violated the aforementioned provisions; (c) whether the failure of author's counsel in the retrial to call witnesses on his behalf violated article 14, paragraph 3 (e); and (d) whether the author's alleged ill-treatment on death row amounts to violations of articles 7 and 10.

8.2 Concerning the substance of Mr. Collins' allegations, the Committee regrets that several requests for clarifications notwithstanding (requests which were reiterated in two interlocutory decisions adopted after the decision on admissibility of 2 November 1988), the State party has confined itself to the observation that the facts relied upon by the author seek to raise issues of facts and evidence that the Committee is not competent to evaluate. The Committee cannot but interpret this as the State party's refusal to cooperate under article 4, paragraph 2, of the Optional Protocol. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. The summary dismissal of the author's allegations, as in the present case, does not meet the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been credibly substantiated.

8.3 The Committee does not accept the State party's contention that the communication merely seeks to raise issues of facts and evidence which the Committee does not have the competence to evaluate. It is the Committee's established jurisprudence that it is in principle for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case or to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge clearly violated his obligation of impartiality. d/ In the present case, the Committee has been requested to examine matters in this latter category. After careful consideration of the material before it, the Committee cannot conclude that the remark attributed to Justice G. in the committal proceedings before the Portland Magistrates Court resulted in a denial of justice for Mr. Collins during his retrial in the Home Circuit Court of Kingston. The author has not even alleged in which respect the instructions given by the judge to the jury were either arbitrary or reflected partiality. The Committee further notes that the verdict of the jury necessarily entailed a mandatory death sentence, by which the judge was bound. Secondly, the Committee notes that, although the author states that he apprised his counsel of the judge's alleged bias towards him, counsel opined that it was preferable to let the trial proceed. Nor was the matter raised on appeal, although the author's case was at all times in the hands of a professional adviser. Even if the remark was indeed made, in the absence of clear evidence of professional negligence on the part of counsel, it is not for the Committee to question the latter's professional judgement. In the circumstances, the Committee finds no violation of article 14, paragraphs 1 and 2.

8.4 Similar considerations apply to the alleged attempts at jury tampering by the investigating officer in the case. In a trial by jury, the necessity to evaluate facts and evidence independently and impartially also applies to the jury; it is important that all the jurors be placed in a position in which they may assess the facts and the evidence in an objective manner, so as to be able to return a just verdict. On the other hand, the Committee observes that where alleged improprieties in the behaviour of jurors or attempts at jury tampering come to the knowledge of either of the parties, these alleged improprieties should have been challenged before the court. In the present case, the author claims that his counsel was informed, on 27 October 1983, that Detective G., the investigating officer, had sought to influence members of the jury. Counsel neither conveyed this information to the judge nor sought to challenge the jurors allegedly influenced by Detective G.; in the Committee's opinion, if it had been thought that the complaint was tenable, it would have been raised before the courts. Accordingly, the Committee cannot conclude that Mr. Collins' rights under article 14, paragraphs 1 and 2, were violated by the State party in this respect.

8.5 As to the author's claim of a violation of article 14, paragraph 3 (e), the Committee notes that at least two witnesses who would have been willing to testify on the author's behalf were present in the courtroom during the retrial. Notwithstanding the author's repeated requests, they were not called. As author's counsel had been privately retained, his decision not to call these witnesses cannot, however, be attributed to the State party. In the view of the Committee, counsel's failure to call defence witnesses did not violate the author's right under article 14, paragraph 3 (e).

8.6 As to the author's allegations of ill-treatment on death row, the Committee observes that the State party has not addressed this claim, in spite of the Committee's request that it do so. It further notes that the author brought his grievances to the attention of the prison authorities, including the Superintendent of St. Catherine District Prison, and to the Parliamentary Ombudsman, and swore affidavits in this context. Apart from the relocation of some prison warders involved in the ill-treatment of the author on 28 May 1990, however, the Committee has not been notified whether the investigations into the author's allegation have been concluded some 18 months after the event, or whether, indeed, they are proceeding. In the circumstances, the author should be deemed to have complied with the requirement of exhaustion of domestic remedies, pursuant to article 5, paragraph 2 (b), of the Optional Protocol. With respect to the substance of the allegation and in the absence of any information to the contrary from the State party, the Committee finds the allegations substantiated and considers that the treatment of Mr. Collins on 28 May 1990 and on 10 September 1990 reveals a violation of article 10, paragraph 1.

8.7 As to the author's claim under article 7, the Committee observes that it equally has not been refuted by the State party. The claim having been sufficiently substantiated, the Committee concludes that the beatings Mr. Collins was subjected to by three prison warders on 28 May 1990, as well as the injuries he sustained as a result of another assault on 10 September 1990, constitute cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 7 and 10, paragraph 1, of the Covenant.

10. Two consequences follow from the findings of a violation by the Committee. The first is that the violation of article 7 of the Covenant should cease, and the author should be treated in accordance with the requirements of article 10, paragraph 1. In this regard the State party should promptly notify the Committee as to the steps it is taking to terminate the maltreatment and to secure the integrity of the author's person. The

State party should also take steps to ensure that similar violations do not occur in the future. The second consequence is that the author should receive an appropriate remedy for the violations he has suffered.

11. The Committee would wish to receive information, within three months of the transmittal to it of this decision, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ On 6 April 1989, the Human Rights Committee had adopted its views under article 5, paragraph 4, of the Optional Protocol in respect of these cases: see Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex X, sect. F.

b/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. S, communication No. 369/1989 (G.S. v. Jamaica), decision of 8 November 1989, para. 3.2.

c/ See ibid., annex IX, sect. J, communication No. 250/1987 (Carlton Reid v. Jamaica), views adopted on 20 July 1990, para. 13.

d/ See ibid., Forty-sixth Session, Supplement No. 40 (A/46/40), annex XI, sect. D, communication No. 253/1987 (Paul Kelly v. Jamaica), views adopted on 8 April 1991, para. 5.13.

Appendix

[Original: French]

Individual opinion of Ms. Christine Chanet, Mr. Kurt Herndl, Mr. Francisco José Aguilar Urbina and Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's views on communication No. 240/1987, Willard Collins v. Jamaica

From our point of view, irrespective of the content and impact of the remarks attributed to Judge G. in the course of the proceedings, the fact that he had taken part in the proceedings in the Portland Magistrates Court in 1981 gave him a knowledge of the case prior to the trial. And this knowledge necessarily related to the charges against the author and the evaluation of those charges and of his character, since the purpose of the Magistrate's Court hearing was indictment and transfer. In our opinion, therefore, his appointment to preside over the second trial of the author in the Kingston Home Circuit Court in October 1983 was incompatible with the requirement of impartiality in article 14, paragraph 1, of the Covenant.

It is for the State party to decide on any incompatibility between the different judicial functions and to enforce its decision, so that a magistrate who has been involved in one phase of the proceedings concerning the pertinent albeit preliminary evaluation of charges against a person, may not take part in any capacity whatsoever in the trial of that person on matters of substance.

Failing that, there is a violation of article 14, paragraph 1. Such is our opinion in this particular case.

C. CHANET
K. HERNDL
F. AGUILAR URBINA
B. WENNERGREN

D. Communication No. 248/1987, Glenford Campbell v. Jamaica (views adopted on 30 March 1992, at the forty-fourth session)

Submitted by:	Glenford Campbell (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	July 1987 (initial submission)
Date of the decision on admissibility:	30 March 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1992,

Having considered communication No. 248/1987, submitted to the Committee by Mr. Glenford Campbell for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication is Glenford Campbell, a Jamaican citizen born on 27 October 1961 in the Parish of Manchester, Jamaica, and currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 7; 9, paragraphs 1 to 3; 10, paragraph 1; and 14, paragraphs 1 to 3 and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author was arrested at midnight on 12 December 1984 at his fiancée's residence in the Copperwood District, Parish of Clarendon. He was informed that he was suspected of having killed Ferdinand Thompson, but he was not formally charged with any offence.

2.2 On 26 January 1985, still in detention, the author was charged with larceny of a cow, valued at $1,000 and belonging to Mr. Thompson, as well as the theft of two ropes and a chain. On 12 March 1985 the author was served a warrant for the murder of Mr. Thompson. It was submitted that he was the last person to have been seen with the deceased, before the latter disappeared. A preliminary inquiry was conducted before the Court of Petty Sessions for the Parish of Manchester on 4 July 1985; the resident examining magistrate, Mr. Sang, ruled that a prima facie case had been made about the charge that, between 27 November and 14 December 1984, the author had murdered Mr. Thompson; the author was committed to stand trial in the Circuit Court for the Parish of Manchester. A legal aid attorney was assigned to him for the preparation of the trial.

2.3 The author's trial began on 14 October 1985. Mr. Campbell made an unsworn statement from the dock. Several witnesses gave evidence for the prosecution, but the author contends that there remain several serious discrepancies between the trial transcript, the judge's summing up and the facts as found by the Court of Appeal. On 16 October 1985, the jury returned a verdict of guilty and the author was sentenced to death.

2.4 For his appeal, which was filed on 22 October 1985, the author was assigned a different legal aid attorney. On 15 May 1987, supplementary grounds of appeal were filed by this lawyer, and the Court of Appeal heard the appeal on 18 May 1987. On 19 May 1987, the appeal was dismissed. The author, who had indicated on the appeal form that he wished to be present during the hearing of the appeal, did not attend the hearing; he indicates that he merely was informed by his lawyer, by letter of 19 May 1987, that the appeal had been dismissed. The attorney further indicated the possibility of a further petition to the Judicial Committee of the Privy Council. Mr. Campbell indicates that he had no opportunity to instruct this lawyer.

2.5 On 27 October 1988, the author petitioned the Judicial Committee of the Privy Council for special leave to appeal. On 21 November 1988, the Judicial Committee refused leave to appeal. With this, it is submitted, available domestic remedies have been exhausted.

Complaint

3.1 The author alleges a violation of article 9, paragraphs 1 to 3. He indicates that when he was arrested on 12 December 1984, the police officer who brought him to the Frankfield police station and questioned him without informing him of his rights merely told him that Mr. Thompson had been reported missing and that as he (the author) was the last person to have been seen with Mr. Thompson, he was suspected of having killed him. It is submitted that the author was detained from 12 December 1984 to 12 March 1985 without being formally charged with the only offence on which he was finally indicted, murder. During this time, he claims, he did not have access to legal representation. The author contends that, in violation of article 9, paragraphs 2 and 3, he was not promptly informed of the charges against him, or brought before a judge or other judicial officer authorized by law to exercise judicial power between 12 December 1984 and 26 January 1985. In this context, he invokes the jurisprudence of the Human Rights Committee as well as the decision of the European Court of Human Rights in the case of McGoff v. Sweden, concerning article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. [a]

3.2 The author further alleges a violation of article 14, paragraph 3 (b), of the Covenant, in that both time and facilities available to him for the preparation of his defence were severely curtailed. Thus, he was not given the opportunity of speaking with his counsel prior to the preliminary hearing. The same legal aid lawyer represented the author for the trial; the author states that this lawyer visited him in prison three days before the start of the trial and prepared a statement for him. Although that statement appears to have formed the basis for the author's unsworn statement from the dock on 15 October 1985, he was not given a copy; he submits that his lawyer did not review the prosecution's case with him.

3.3 The author further contends that his lawyer did not comply with many of his instructions; this is said to constitute a violation of article 14, paragraph 3 (e). Thus, he had requested that witnesses be called on his behalf; counsel, in a letter of 19 April 1990, states that he had been given the names of prospective witnesses but was unable to trace them, and that none of the author's relatives had come to see him. Towards the end of the trial, one person who claimed to know the author spoke to counsel and told him that she had not testified because she did not want to "get involved". In the author's opinion, the only reason why witnesses were not traced and called was that the legal aid rates were so inadequate that the lawyer was not able to make the necessary inquiries and initiate the necessary steps in order to prepare his defence.

3.4 The author specifically instructed his lawyer that the evidence presented by one of the investigating police officers was incorrect. He was told that this matter would have to be addressed at a later stage during the trial; in the end, it was not addressed at all. The author also informed counsel that the two investigating officers had beaten him during interrogation and forced him to sign a statement without knowing what it was about. Although so informed, counsel did not act on these instructions. Neither the trial transcript nor any of the depositions taken during the preliminary hearing indicate that the police officers' evidence was challenged or objected to, as it should have been in accordance with the author's instructions. Counsel contends that, notwithstanding, the judge should have given due consideration to the admissibility of unwritten confessional material. In this context, she refers to the Judges Rules, which police officers must respect. Under rule 2, an officer must caution anyone whom he suspects may have committed an offence before putting further questions to that person. The author submits that he was not cautioned. Under rule 9, statements taken in accordance with the Rules should, wherever possible, be taken down in writing and signed by the person making them, after having been given an opportunity to make appropriate corrections. The author was not asked by the police officers whether he wished to write down his statement, nor was he invited to make any corrections.

3.5 Counsel notes that the Judges Rules have been adopted by several Commonwealth jurisdictions, including Jamaica. Whenever a statement made in breach of the Rules is sought to be admitted, the judge must exercise his discretion as to whether or not to admit such a statement. If the judge decides to admit it, he must carefully instruct the jury as to how to treat it; the author submits that the judge did not display this particular care. He concludes that as he was never advised that he had a right to remain silent, he was, in effect, compelled to make a statement, in violation of article 14, paragraph 3 (g).

3.6 The author, while conceding that it is in principle for the domestic courts and not for the Committee to evaluate facts and evidence in a particular case, contends that the instructions to the jury in respect of the author's trustworthiness were so tainted by the judge's own opinion as to amount to a denial of justice, especially if combined with his instructions concerning the circumstantial evidence and motive and with respect to the failure of counsel to challenge the confession statement. Counsel points, in particular, to the following remark made by the judge when summing up the author's unsworn statement: "It would be your duty as judges of fact to pay attention to the demeanour of the accused while he was giving his unsworn statement."

3.7 Moreover, it is contended that the judge did not follow the directions given by Lord Norman in Teper v. Regina (AC 480, at 489), according to which circumstantial evidence must always be narrowly examined. In the author's case, the judge in fact asked the jury to infer that the theft of the cow was the motive for the murder of Mr. Thompson, i.e., that Mr. Campbell had committed the murder in order to facilitate or conceal the theft of the cow. It is submitted that the judge, in a case turning on the evaluation of circumstantial evidence, attached undue weight to one of several possible inferences which could be drawn from a general finding of untruthfulness.

3.8 In respect of the conduct of his appeal, the author alleges violations of article 14, paragraphs 3 (b) and (d) and 5, of the Covenant. The attorney assigned to his appeal concedes that he did not seek instructions from the author; the author argues that as he had no opportunity to consult with that lawyer, he was denied his right to properly prepare his defence. He further contends that because he was at no time informed when his appeal was being heard and was represented for the appeal by an attorney not of his choosing, his rights under article 14, paragraphs 3 (d) and 5, were also violated: the conduct of the appeal is said to have jeopardized an effective appeal to the Judicial Committee of the Privy Council.

3.9 The author notes that more than 18 months passed between his conviction and the dismissal of the appeal. On 7 August 1987 and again on 6 April 1988, the Court of Appeal's written judgement was requested. Counsel only obtained a copy of the latter in early July 1988; he served notice of his intention to petition the Judicial Committee for special leave to appeal on 25 August 1988, and filed his petition on 27 October 1988. These delays, coupled with the time spent in detention without being charged, are said to amount to a breach of article 14, paragraph 3 (c).

3.10 The author contends that on the basis of his allegations detailed in paragraphs 3.2 to 3.7 above, his right, under article 14, paragraph 2, to be presumed innocent until proved guilty according to law has been violated. He refers to the jurisprudence of the Committee in this respect. b/

3.11 Finally, the author contends that the conditions of his imprisonment are inhuman and degrading, amounting to a violation of articles 7 and 10 of the Covenant. Thus, he claims that he has received physical threats from prison warders; that there is a lack of hygienic and sanitary facilities on death row, which makes the living conditions highly insalubrious; and that the conditions of imprisonment are seriously detrimental to his health. In support of his contentions, the author submits a copy of a report about the conditions of detention at St. Catherine District Prison, prepared by a United States non-governmental organization. Furthermore, the constant stress and anxiety suffered as a result of prolonged detention on death row are said to constitute a separate violation of article 7 of the Covenant.

3.12 With respect to the requirement of exhaustion of domestic remedies, the author contends that an application to the Supreme (Constitutional) Court would not be an available and effective remedy in his case. He points out that legal aid is not available for this purpose under the Poor Prisoners'

Defence Act of 1961 or the Poor Persons (Legal Proceedings) Act of 1941, that he does not have the means to himself secure legal representation in Jamaica to argue a constitutional motion on a pro bono basis.

3.13 The author further notes that his allegation that he was denied a fair trial was specifically rejected by the Judicial Committee of the Privy Council. In the circumstances, he should not be required to argue points of law before a court of lower jurisdiction in Jamaica which he had already argued before the Privy Council. The Privy Council, if seized of an appeal on a decision on motion pursuant to section 25 of the Constitution, would in all probability confirm its earlier decision. Finally, a court of lesser jurisdiction in Jamaica would be bound by the Judicial Committee's earlier decision.

State party's information and observations

4.1 By submission of 20 July 1988, the State party argued that the author retained the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. It added that legal aid would be available to him for that purpose. The author's subsequent petition to the Judicial Committee was dismissed on 21 November 1988.

4.2 In a further submission dated 4 April 1990, made after the Committee's decision on admissibility, the State party contends that although the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed, he retains the right, under sections 20 and 25 of the Constitution, to apply to the Supreme (Constitutional) Court for redress. A decision of the Supreme Court may be appealed to the Court of Appeal of Jamaica and from there the Judicial Committee of the Privy Council.

4.3 As to the author's allegations that the trial judge misdirected the jury on the issue of circumstantial evidence and that witnesses against him allegedly gave false evidence, the State party argues that these claims seek to raise issues of fact and evidence which the Committee has no competence to evaluate. The State party refers to the Committee's jurisprudence in this respect. c/

4.4 As to the issue of whether a copy of the written judgement of the Court of Appeal was made available to the author or his counsel without delay, the State party notes that "the written judgement would have been available to [the author's] representative at the time it was delivered by the Court of Appeal".

Issues and proceedings before the Committee

5.1 During its thirty-fifth session, in March 1989, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, the Committee concluded that, after the dismissal of the author's petition for special leave to appeal by the Judicial Committee, there were no further remedies available to the author.

5.2 On 30 March 1989, the Committee declared the communication admissible.

5.3 The Committee has noted the State party's submission of 4 April 1990, made after the decision on admissibility, in which it reaffirms its position that the communication remains inadmissible on the ground of non-exhaustion of domestic remedies. The Committee takes the opportunity to expand on its admissibility findings, in the light of the State party's further observations.

5.4 The Committee observes that domestic remedies within the meaning of the Optional Protocol must be both available and effective. It recalls that by submission of 10 October 1991 concerning a different case, the State party indicated that legal aid is not provided in respect of constitutional motions. d/ It is further uncontested that no lawyer in Jamaica is willing to represent the author for this purpose on a pro bono basis. In this context, the Committee observes that it is not the author's indigence that absolves him from pursuing constitutional remedies, but the State party's inability or unwillingness to provide legal aid for that purpose.

5.5 The State party has claimed, again in respect of different cases involving capital punishment, that it has no obligation under the Covenant to make legal aid available in respect of constitutional motions, as such motions do not involve the determination of a criminal charge, as required by article 14, paragraph 3 (d), of the Covenant. This issue before the Committee has not, however, been raised in the context of article 14, paragraph 3 (d), but in the context of whether domestic remedies have been exhausted.

5.6 For the above reasons, the Committee maintains that a constitutional motion does not constitute a remedy that is both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Accordingly, there is no reason to reverse its decision on admissibility of 30 March 1989.

5.7 With regard to the allegations under articles 7 and 10, paragraph 1, of the Covenant, concerning the conditions of the author's detention on death row, the Committee notes that the substantiation thereof was not submitted by counsel until after the adoption of the Committee's decision on admissibility. The Committee further observes that the issues concerning Mr. Campbell's detention on death row and the question of whether prolonged detention on death row constitutes inhuman and degrading treatment were not placed before the Jamaican courts, nor apparently brought to the attention of any other competent Jamaican authority. As domestic remedies in this respect have manifestly not been exhausted, the Committee is precluded from considering these allegations on their merits.

6.1 As to the substance of Mr. Campbell's admissible allegations, the Committee regrets that several requests for clarifications notwithstanding, the State party has confined itself to the observation that the author seeks to raise issues of facts and evidence that the Committee is not competent to evaluate. The Committee cannot but interpret this as the State party's refusal to cooperate under article 4, paragraph 2, of the Optional Protocol. This provision enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and to make available to the Committee all the information at its disposal. The summary dismissal of the author's allegations, as in the instant case, does not fulfil the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been credibly substantiated.

6.2 The Committee rejects the State party's contention that the communication merely seeks to raise issues of facts and evidence which the Committee does not have the competence to evaluate. It is the Committee's established jurisprudence that it is in principle for the appellate courts of State parties to the Covenant to evaluate facts and evidence in a particular case or to review the judge's instructions to the jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. e/ In this case, the Committee has been requested to examine matters belonging in this latter category. After careful consideration of the material before it, the Committee concludes that the remarks made by Justice T. about the author's "demeanour" in his summing up to the jury were neither arbitrary nor amounted to a manifest violation of his obligation of impartiality. The Committee cannot conclude either that the judge's directions unfairly buttressed the case of the prosecution. In the circumstances, the Committee finds no violation of article 14, paragraph 1. It follows that the conduct of the trial by the judge had no incidence on the author's right, under article 14, paragraph 2, to be presumed innocent until proved guilty according to law.

6.3 In respect of the allegations pertaining to article 9, paragraphs 1 to 3, the State party has not contested that the author was detained for three months before he was formally charged with murder, and that throughout the period from 12 December 1984 to 12 March 1985 he had no access to legal representation. The Committee does not consider that the author's arrest was arbitrary within the meaning of article 9, paragraph 1, as he was apprehended on suspicion of having committed a specified criminal offence. However, the Committee finds that the author was not "promptly" informed of the charges against him: one of the most important reasons for the requirement of "prompt" information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority. A delay from 12 December 1984 to 26 January 1985 does not meet the requirements of article 9, paragraph 2.

6.4 The Committee further considers that the delay from 12 December 1984 to 26 January 1985 in the present case between Mr. Campbell's arrest and his presentation to a judge violates the principle, in article 9, paragraph 3, that anyone arrested on a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. The Committee considers it to be an aggravating factor that the author had no access to legal representation from December 1984 to March 1985. This means, in the author's case that his right under article 9, paragraph 4, was also violated, since he was not in due time afforded the opportunity to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.

6.5 The right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and an important aspect of the principle of equality of arms. In cases in which a capital sentence may be pronounced on the accused, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. The author also contends that he was unable to secure the attendance of witnesses on his behalf. The Committee notes, however, that the material before it does not reveal that either counsel or the author complained to the trial judge that the time or facilities were inadequate. The Committee therefore finds no violation of article 14, paragraph 3 (b) and (e).

6.6 Concerning the adequacy of the author's legal representation, both on trial and on appeal, the Committee recalls that it is axiomatic that legal assistance be made available to individuals facing a capital sentence. In the present case, it is uncontested that the author instructed his lawyer to raise objections to the confessional evidence, as he claimed this was obtained through maltreatment; this was not done. This failure had a clear incidence on the conduct of the appeal; the written judgement of the Court of Appeal of 19 June 1987 emphasizes that no objections were raised by the defence in respect of the confessional evidence. Furthermore, although the author had specifically indicated that he wished to be present during the hearing of the appeal, he was not only absent when the appeal was heard but, moreover, could not instruct his representative for the appeal, despite his wish to do so. Taking into account the combined effect of the above-mentioned circumstances, and bearing in mind that this is a case involving the death penalty, the Committee considers that the State party should have allowed the author to instruct his lawyer for the appeal, or to represent himself at the appeal proceedings. To the extent that the author was denied effective representation in the judicial proceedings and in particular as far as his appeal is concerned, the requirements of article 14, paragraph 3 (d), have not been met.

6.7 As to the claim under article 14, paragraph 3 (g), the Committee notes that the wording of this provision - i.e. that no one shall "be compelled to testify against himself or to confess guilt" - must be understood in terms of the absence of any pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. In the present case, the author's claim that he was beaten during interrogation and forced to sign a blank confession statement has not been contested by the State party. It remains the Committee's duty to ascertain whether the author has sufficiently substantiated his allegation, notwithstanding the State party's failure to address it. After careful consideration of the material before it, the Committee is unable to determine that the investigating officers used force to compel Mr. Campbell to confess his guilt, in violation of article 14, paragraph 3 (g), or that the judge erred in admitting the confessional evidence put forth by the prosecution.

6.8 With respect to the claim of "undue delay" in the proceedings against the author, the Committee does not consider that a delay of 10 months between conviction and the dismissal of the appeal, resulted in "undue delay(s)" within the meaning of article 14, paragraph 3 (c), of the Covenant. The Committee is further unable to conclude that the conduct of the appeal jeopardized the author's chances of an effective appeal to the Judicial Committee of the Privy Council, in violation of article 14, paragraph 5. In this context, the Committee notes that the Court of Appeal produced a written judgement within one month after dismissing the appeal; it also lacks evidence that such delays as were experienced by counsel in obtaining a copy of the written judgement must be attributed to the State party.

6.9 The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee observed in its General Comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal". In the instant case, while a constitutional motion to the Supreme (Constitutional) Court might in theory still be available, it would not be an effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, for the reasons outlined in paragraphs 5.4 to 5.7 above. It may thus be concluded that the final sentence of death was passed without having met the requirements of article 14, and that as a result the right protected by article 6 of the Covenant has been violated.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 6; 9, paragraphs 2 to 4; and 14, paragraph 3 (d), of the Covenant.

8. In capital punishment cases, the obligation of State parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Glenford Campbell is entitled, according to article 2, paragraph 3 (a), of the Covenant, to an effective remedy, in this case entailing his release. The State party is under an obligation to take measures to ensure that similar violations do not occur in the future.

9. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's Views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See 8 ECHR 246 [1986].

b/ Communication No. 8/1977 (*Weismann and Lanza Perdomo v. Uruguay*) in: *Selected Decisions of the Human Rights Committee under the Optional Protocol* (United Nations publication, Sales No. E.89.XIV.1), vol. I, pp. 45-49.

c/ See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), vol. II, annex X, sects. M and S, communications Nos. 290/1988 (*A.W. v. Jamaica*), decisions of 8 November 1989, para. 8.2, and 369/1989 (*G.S. v. Jamaica*), para. 3.2.

d/ See sect. J below, communication No. 283/1988 (Aston Little v. Jamaica), Committee's views adopted on 1 November 1991, paras. 7.3 and 7.4.

e/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), annex XI, sect. D, communication No. 253/1987 (Paul Kelly v. Jamaica), views adopted on 8 April 1991, para. 5.13; and section C above, communication No. 240/1987 (Willard Collins v. Jamaica), views adopted on 1 November 1991, para. 8.3.

E. Communication No. 269/1987, Delroy Prince v. Jamaica (views adopted on 30 March 1992, at the forty-fourth session)

Submitted by:	Delroy Prince
Alleged victim:	The author
State party:	Jamaica
Date of communication:	15 December 1987
Date of decision on admissibility:	19 October 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1992,

Having concluded its consideration of communication No. 269/1987, submitted to the Human Rights Committee by Mr. Delroy Prince under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is Delroy Prince, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica.

2.1 The author states that he and three others were arrested and charged with the murder of a young girl in 1980, but claims to be innocent of the charge. He was convicted and sentenced to death on 8 March 1983, while his codefendants were acquitted. The Court of Appeal in Jamaica dismissed his appeal on 25 July 1985.

2.2 In 1986, a warrant for the execution of the author was issued, but a stay was granted. After the office of the Governor-General had transmitted new evidence, a retrial was requested. The Court of Appeal did not, however, grant the Governor-General's request. A petition for special leave to appeal to the Judicial Committee of the Privy Council was then filed on the author's behalf; on 15 December 1987, the Judicial Committee refused special leave to appeal. Towards the end of 1987, a second warrant for the author's execution was issued, and another last-minute stay was granted. Subsequently a petition for mercy was submitted to the Governor-General, requesting a commutation of the death sentence.

2.3 The author alleges that during pretrial detention he was severely beaten by the arresting police officers, to whom he refused to make a statement; this allegation was before the Court of first instance, but was rejected. The author's girlfriend, who he claims would have been able to provide an alibi and corroborate his evidence, reportedly did not testify on his behalf because of threats against her life. The author himself allegedly also received threats prior to his trial; during the trial he did not disclose the identity of the murderer for fear of his family's and his own life.

2.4 The author further alleges that other witnesses who would have been able to testify on his behalf during the trial did not do so because of fear for their lives; some of these potential witnesses are even said to have left their homes for this reason. It is not clear whether the witnesses against the author were cross-examined during the trial, and it appears that no witnesses were called to testify on his behalf.

Complaint

3. Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation by Jamaica of articles 7 and 14 of the Covenant.

Committee's admissibility considerations and decision

4. The time-limit for the State party's observations on admissibility expired on 12 September 1988. In spite of a reminder sent on 13 July 1989, no submission was received from the State party.

5.1 At its thirty-seventh session, the Committee considered the admissibility of the communication, noting that the Judicial Committee of the Privy Council had dismissed the author's petition for special leave to appeal. The Committee also noted that the subsequent petition for mercy to the Governor-General did not appear to have produced any result. The Committee further observed that a petition for mercy to the highest executive officer of a State party to the Optional Protocol does not constitute a remedy that must be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol. On the basis of the information before it, the Committee concluded that there were no further remedies that the author was required to exhaust for purposes of admissibility.

5.2 The Committee noted that the author had failed to provide detailed information about the circumstances of the trial, although he was explicitly requested to do so in the Working Group's decision of 15 March 1988. It considered that the author's allegations, in so far as they related to the guarantee of a fair hearing, laid down in article 14 of the Covenant, pertained above all to paragraph 3 (e); it decided that these allegations, as well as the author's allegations of maltreatment, should be considered on the merits.

5.3 On 19 October 1989, the Committee declared the communication admissible in respect of articles 7 and 14, paragraph 3 (e), of the Covenant.

Review of the admissibility decision

6.1 By submission dated 8 May 1990, the State party challenges the admissibility decision and argues that the communication is inadmissible on the ground of failure to exhaust all available domestic remedies. It submits that, notwithstanding the dismissal of the author's petition to the Judicial Committee of the Privy Council, the author still has constitutional remedies he may pursue.

6.2 The State party contends that the rights protected by articles 7 and 14, paragraph 3 (e), of the Covenant are also protected by sections 14 and 20, paragraph 5 (d), of the Jamaican Constitution.

6.3 The State party states that under section 25 of the Constitution any person who alleges that any of the rights protected in the Constitution have been, are being or are likely to be contravened in relation to him may without prejudice to any other action with regard to the same subject-matter which is lawfully available, apply to the Supreme Court for redress. An appeal lies from the decision of the Supreme Court to the Court of Appeal and from the decision of that Court to the Judicial Committee of the Privy Council.

7. The Committee has considered the State party's arguments and reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee recalls that in a different case a/ the State party indicated that legal aid is not provided for constitutional motions. The Committee, therefore, considers that a constitutional motion does not constitute a remedy that is both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. There is therefore no reason to revise the Committee's earlier decision on admissibility of 19 October 1989.

Examination of the merits

8.1 As to the substance of the author's allegations, the Committee notes with concern that the State party has confined itself to the observation that the information provided by the author does not support his allegations; it has not addressed the author's specific claims under articles 7 and 14, paragraph 3 (e), of the Covenant. Article 4, paragraph 2, of the Optional Protocol enjoins the State party to investigate in good faith all the allegations made against it, and to make available to the Committee all the information at its disposal. The Committee is of the opinion that the summary dismissal of the author's allegations in general terms does not meet the requirements of article 4, paragraph 2, of the Optional Protocol.

8.2 As to the author's claims relating to article 14, paragraph 3 (e), the Committee notes that the trial transcripts disclose that the prosecution witnesses were in fact cross-examined by the defence. The Committee is not in a position to ascertain whether the failure of the defence to call witnesses on the author's behalf was a matter of counsel's professional judgement or the result of intimidation. The material before the Committee does not disclose whether either counsel or author complained to the trial judge that potential defence witnesses were subjected to intimidation. Similarly, the Committee is unable to conclude, from the information before it, that the defence was actually denied the opportunity to call witnesses. The Committee therefore finds no violation of article 14, paragraph 3 (e), of the Covenant.

8.3 With respect to the alleged violation of article 7 of the Covenant, the Committee notes that the author's claim has not been contested by the State party. Notwithstanding, it is the Committee's duty to ascertain whether the author has substantiated his allegation. After careful examination of the information before it, and taking into account that the author's allegation was before the jury during the trial, the Committee concludes that the author has failed to substantiate his claim that he is a victim of a violation by the State party of article 7 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See sect. J below, communication No. 283/1988, Little v. Jamaica, views adopted by the Committee on 1 November 1991.

F. Communications Nos. 270/1988 and 271/1988, Randolph Barrett and Clyde Sutcliffe v. Jamaica (views adopted on 30 March 1992, at the forty-fourth session)

Submitted by:	Randolph Barrett and Clyde Sutcliffe (represented by counsel)
Alleged victims:	The authors
State party:	Jamaica
Date of communications:	4 and 7 January 1988, respectively
Date of decision on admissibility:	21 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 1992,

Having concluded its consideration of communications Nos. 270/1988 and 271/1988, submitted to the Human Rights Committee by Messrs. Randolph Barrett and Clyde Sutcliffe under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communications and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.*

Facts as submitted by the authors

1. The authors of the communications are Randolph Barrett and Clyde Sutcliffe, two Jamaican citizens awaiting execution at St. Catherine District Prison, Jamaica. They claim to be victims of a violation of their human rights by Jamaica. They are represented by counsel. Although counsel invokes only a violation of article 7 of the International Covenant on Civil and Political Rights, it transpires from some of the authors' submissions that they also allege violations of article 14.

2.1 The authors were arrested on 10 and 11 July 1977, respectively, on suspicion of having murdered two policemen at the Runaway Bay police station in the parish of St. Ann. The prosecution contended that they belonged to a group of five men who had been stopped by the police in the context of the investigation of a robbery that had occurred at a nearby petrol station. One of the men (neither Mr. Barrett nor Mr. Sutcliffe) took a sub-machine-gun out of a bag and opened fire on the police officers, killing two of them. The authors were subsequently charged with murder on the basis of "common design"; they denied having participated in the robbery and having been in possession of stolen goods.

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* An individual opinion by Ms. Christine Chanet is appended.

2.2 The authors' trial in the Home Circuit Court of Kingston began on 10 July 1978 and lasted until 27 July 1978. Both Mr. Barrett and Mr. Sutcliffe were represented by legal aid attorneys. In the course of the trial, an independent ballistics expert was to appear for the defence but did not arrive in court in time. The adjournment requested by Mr. Barrett's attorney was refused by the judge. On 27 July 1978 the authors were found guilty as charged and sentenced to death. They appealed to the Jamaican Court of Appeal, which heard their appeals between 9 and 12 March 1981, dismissing them on 12 March; it produced a written judgement on 10 April 1981.

2.3 On 24 and 26 November 1987, respectively, warrants for the execution of Mr. Barrett and Mr. Sutcliffe, on 1 December 1987, were issued by the Jamaican authorities. Mr. Barrett's former legal aid representative obtained a stay of execution on his client's and on Mr. Sutcliffe's behalf, with a view to filing a petition with the Judicial Committee of the Privy Council. In 1988, a London law firm agreed to represent the authors for purposes of filing a petition to the Judicial Committee of the Privy Council. On 22 July 1991, the petition was dismissed by the Judicial Committee, which, however, expressed concern about the judicial delays in the case.

Complaint

3.1 The authors claim to be innocent and allege that their trial was unfair. Both challenge their identification parade as irregular, since it allegedly was organized by police officers who sought to influence witnesses and conspired to ensure that the authors would be identified as those responsible for the death of the policemen. Mr. Sutcliffe adds, without giving further details, that he was denied contact with legal counsel until he was formally charged and denounces the "battered state" in which he was placed on the identification parade, which allegedly was the result of rough treatment he had been subjected to while in custody.

3.2 Mr. Barrett further submits that, following his arrest by the Browns Town police and a brief stay in the hospital (where fragments of a bullet were removed from his ankle), he was kept in solitary confinement at the Ocho Ríos police station, without being able to see a relative or a lawyer. When he was told that he would be placed on an identification parade, he protested that he was without legal representation.

3.3 With respect to the conduct of the trial, Mr. Barrett claims, without further substantiating his claim, that the preparations for his defence were inadequate. He submits that he had no contact with his lawyer between the date of his conviction in July 1978 and the date of the issue of the warrant for his execution in November 1987. Letters addressed to this lawyer went unanswered.

3.4 With respect to the conditions of detention on death row, Mr. Sutcliffe submits that he was attacked by warders on several occasions. The most serious incident allegedly occurred on 20 November 1986, when warders took him from his cell and beat him with batons and iron pipes until he lost consciousness. He was then locked in his cell for over 12 hours without either medical attention or food, despite the fact that he had sustained the fracture of an arm and other injuries to legs and ribs. It was only on the following day that he was taken to the hospital. He claims that he had to wait until his arm had healed before he could write to the Parliamentary Ombudsman about the incident. The Ombudsman promised to take up the matter, but the author states that he did not receive any further communication from him. Moreover, warders have allegedly threatened him so as to induce him not to pursue the matter further.

3.5 Counsel further submits that the time spent on death row, over 13 years, amounts to cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant. In this context, it is argued that the execution of a sentence of death after a long period of time is widely recognized as cruel, inhuman and degrading, on account of the prolonged and extreme anguish caused to the condemned man by the delay. a/ This anguish is said to have been compounded by the issue of death warrants to the authors in November 1987.

3.6 As to the delays encountered in the judicial proceedings in the case, counsel notes that in spite of repeated requests for legal aid, it was only in 1988 that the authors succeeded in obtaining the pro bono services of a London law firm, for purposes of petitioning the Judicial Committee of the Privy Council. Several court documents deemed necessary for the preparation of the petition for special leave to appeal could not be obtained until March 1991; accordingly, such delays as did occur cannot be attributed to the authors.

State party's observations on admissibility

4. The State party contended, in submissions dated 20 July 1988 and 10 January 1990, that the communications were inadmissible on the ground of non-exhaustion of domestic remedies, since the authors retained the right to petition the Judicial Committee of the Privy Council for special leave to appeal. It enclosed a copy of the written judgement of the Court of Appeal in the case, adding that it would have been available, upon request, to authors' counsel after its delivery on 10 April 1981.

Committee's admissibility decision and request for further information

5.1 On 21 July 1989, the Committee declared the communications admissible, noting that the authors' appeal had been dismissed in 1981 and that, in the circumstances, the pursuit of domestic remedies had been unreasonably prolonged.

5.2 During its forty-second session, the Committee further considered the communications; it decided to request additional information and clarifications from the State party in respect of the authors' allegations under articles 7 and 10 of the Covenant.

Review of admissibility

6.1 By submissions of 23 and 30 January 1992, the State party challenges the decision on admissibility and reiterates that the complaints remain inadmissible on the ground of non-exhaustion of domestic remedies. In respect of the alleged violations of article 7 (ill-treatment on death row and anguish caused by prolonged detention on death row), it submits that the authors may file for constitutional redress under section 25 of the Jamaican Constitution, for violations of their rights protected by section 17. A decision of the

Constitutional Court may be appealed to the Court of Appeal of Jamaica and to the Judicial Committee of the Privy Council.

6.2 The State party affirms that such delays as occurred in the judicial proceedings are attributable to the authors, who failed to avail themselves of their right to appeal against conviction and sentence in an expeditious manner. As there is no indication that the State party was responsible for any of these delays by either act or omission, the State party cannot be deemed to be in breach of article 7.

6.3 The State party adds that notwithstanding the inadmissibility of the claims under article 7, "it will, prompted by humanitarian considerations, take steps to have investigated the allegations concerning the conditions [of detention] on death row and brutal acts [in] the prison".

7.1 The Committee has taken due note of the State party's submissions, dated 23 and 30 January 1992, that the communications remain inadmissible on account of the authors' failure to resort to constitutional remedies.

7.2 The same issues concerning admissibility have already been examined by the Committee in its views on communications Nos. 230/1987 (Henry v. Jamaica) and 283/1988 (Little v. Jamaica). b/ In the circumstances of those cases, the Committee concluded that a constitutional motion was not an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and that, accordingly, the Committee was not precluded from examining the merits.

7.3 The Committee has taken note of the fact that subsequent to its decision on admissibility the Supreme (Constitutional) Court of Jamaica has had an opportunity to determine whether an appeal to the Court of Appeal of Jamaica and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of section 25 (2) of the Jamaican Constitution. The Supreme Court has answered this question in the negative by taking jurisdiction over and examining the constitutional motions filed on behalf of Ivan Morgan and Earl Pratt (judgement entered on 14 June 1991). The Committee reiterates that whereas the issue is settled for purposes of Jamaican law, the application of article 5, paragraph 2 (b), of the Optional Protocol is determined by different considerations, such as the length of judicial proceedings and the availability of legal aid.

7.4 In the absence of legal aid for constitutional motions and bearing in mind that the authors were arrested in July 1977, convicted in July 1978, and that their appeals were dismissed in March 1981 by the Court of Appeal of Jamaica and in July 1991 by the Judicial Committee of the Privy Council, the Committee finds that recourse to the Supreme (Constitutional) Court is not required under article 5, paragraph 2 (b), of the Optional Protocol. There is, accordingly, no reason to reverse the Committee's decision on admissibility of 21 July 1989.

Examination of merits

8.1 The Committee notes that, several requests for clarifications notwithstanding, the State party has essentially confined itself to issues of admissibility. Article 4, paragraph 2, of the Optional Protocol enjoins a

State party to investigate in good faith and within the imparted deadlines all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. In the circumstances, due weight must be given to the authors' allegations, to the extent that they have been sufficiently substantiated.

8.2 With respect to the alleged violations of the Covenant, three issues are before the Committee: (a) whether the authors' legal representation and the course of the judicial proceedings amounted to a violation of their rights under article 14; (b) whether the fact of having spent over 13 years on death row constitutes in itself cruel, inhuman and degrading treatment within the meaning of article 7; and (c) whether the authors' alleged ill-treatment during detention and on death row violates article 7.

8.3 With regard to the claims relating to article 14, the Committee considers that the authors have not corroborated their allegations that their identification parade was unfair. Similar considerations apply to Mr. Barrett's claim that the preparations for his defence and his legal representation were inadequate, and to Mr. Sutcliffe's claim that he was denied access to counsel prior to his formal indictment. The Committee notes, in this context, that authors' counsel has not put forward any claims under article 14.

8.4 The authors have claimed a violation of article 7 on account of their prolonged detention on death row. The Committee starts by noting that this question was not placed before the Jamaican courts, nor before the Judicial Committee of the Privy Council. It further reiterates that prolonged judicial proceedings do not per se constitute cruel, inhuman and degrading treatment, even if they may be a source of mental strain and tension for detained persons. This also applies to appeal and review proceedings in cases involving capital punishment, although an assessment of the particular circumstances of each case would be called for. In States whose judicial system provides for a review of criminal convictions and sentences, an element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies is inherent in the review of the sentence; thus, even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies. A delay of 10 years between the judgement of the Court of Appeal and that of the Judicial Committee of the Privy Council is disturbingly long. However, the evidence before the Committee indicates that the Court of Appeal rapidly produced its written judgement and that the ensuing delay in petitioning the Judicial Committee is largely attributable to the authors.

8.5 Concerning the allegations of ill-treatment during detention and on death row, the Committee deems it appropriate to distinguish between the individual claims put forth by the authors. While Mr. Barrett has made claims that might raise issues under articles 7 and 10, paragraph 1, of the Covenant, in particular concerning alleged solitary confinement at the Ocho Rios police station, the Committee considers that these have not been further substantiated and finds no violation of article 7 or article 10, paragraph 1.

8.6 Mr. Sutcliffe has alleged that he was subjected to beatings in the course of the preliminary investigation, and that he suffered serious injuries at the hand of prison officers. He submits that he unsuccessfully tried to seize the prison authorities and the Parliamentary Ombudsman of his complaint in respect of ill-treatment on death row, and that, far from investigating the matter, prison officers have urged him not to pursue the matter further. Concerning the first allegation, the author's contention that he was placed on the identification parade in "a battered state" has not been further substantiated; moreover, it transpires from the judgement of the Court of Appeal that the author's allegation was before the jury during the trial in July 1978. In that respect, therefore, the Committee cannot conclude that a violation of articles 7 or 10 has occurred. As to alleged ill-treatment in November 1986, however, the author's claim is better substantiated and has not been refuted by the State party. The Committee considers that the fact of having first been beaten unconscious and then left without medical attention for almost one day, in spite of a fractured arm and other injuries, amounts to cruel and inhuman treatment within the meaning of article 7 and, therefore, also entails a violation of article 10, paragraph 1. In the Committee's view, it is an aggravating factor that the author was later warned against further pursuing his complaint about the matter to the judicial authorities. The State party's offer, made in January 1992, that is over five years after the event, to investigate the claim "out of humanitarian considerations" does not change anything in this respect.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights in respect of Mr. Sutcliffe.

10.1 In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by Mr. Sutcliffe, including the award of appropriate compensation, and to ensure that similar violations do not occur in the future.

10.2 The Committee would wish to receive information, within 90 days, on any relevant measures adopted by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ Reference is made to the judgement of the United States Supreme Court in Furman v. Georgia (1972) 408 US 238, quoted in the dissenting opinion in Riley & others v. Att. General of Jamaica (1982) 2 All ER 469, at 479a.

b/ See sect. B above, communication No. 230/1987, views adopted on 1 November 1991, paras. 7.2-7.4; and sect. J below, communication No. 283/1988, views adopted on 1 November 1991, paras. 7.2-7.5.

Appendix

Individual opinion submitted by Ms. Christine Chanet pursuant to rule 94, paragraph 3, of the rules of procedure in respect of communications Nos. 270/1988 and 271/1988 (Barrett and Sutcliffe v. Jamaica)

I cannot accept the content of the last sentence of paragraph 8.4 of the decision taken by the Human Rights Committee on communications Nos. 270/1988 and 271/1988 in that it holds the authors to be largely responsible for the length of their detention on death row because, during this period, they allegedly waited until the last moment before appealing to the Privy Council. On the basis of this argument, the Committee finds that there was no violation of article 7 of the Covenant in that respect.

In my view it is difficult for the criteria formulated by the Committee to assess the reasonableness of the duration of proceedings to be applied without qualification to the execution of a death sentence. The conduct of the person concerned with regard to the exercise of remedies ought to be measured against the stakes involved. Without being at all cynical, I consider that the author cannot be expected to hurry up in making appeals so that he can be executed more rapidly.

On this point, I share the position taken by the European Court of Human Rights in its judgement of 7 July 1989 on the Soering case: "Nevertheless, just as some lapse of time between sentence and execution is inevitable if appeal safeguards are to be provided to the condemned person, so it is equally part of human nature that the person will cling to life by exploiting those safeguards to the full. However, well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death."

Consequently, my opinion is that, in this type of case, the elements involved in determining the time factor cannot be assessed in the same way if they are attributable to the State party as if they can be ascribed to the condemned person. A very long period on death row, even if partially due to the failure of the condemned prisoner to exercise a remedy, cannot exonerate the State party from its obligations under article 7 of the Covenant.

Christine CHANET

G. Communication No. 272/1988, Alrick Thomas v. Jamaica (views adopted on 31 March 1992, at the forty-fourth session)

Submitted by:	Alrick Thomas (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	12 January 1988
Date of decision on admissibility:	24 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 March 1992,

Having concluded its consideration of communication No. 272/1988, submitted to the Human Rights Committee by Mr. Alrick Thomas under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is Alrick Thomas, a Jamaican citizen currently imprisoned in the Kingston General Penitentiary. He claims to be a victim of a violation by Jamaica of his human rights. He is represented by counsel.

2.1 The author, an ex-constable of the Manchester Police Force, states that he was arrested on 25 October 1984 a/ and on 29 October 1984 he was charged with the murder of Leroy Virtue. The author claims that the deceased was shot incidentally, in the course of a brief mêlée outside a bar, after a man who had been in the company of the deceased had resisted the author's attempt to arrest him.

2.2 For the duration of the preliminary investigation, the author was granted bail, which was subsequently extended until the beginning of the trial on 27 January 1985. On that day, the author was still without legal representation because of lack of financial means. The Court was so informed and the trial judge instructed the clerk of the Court to ask Mr. Alonzo Manning, a legal aid lawyer, to attend court on 29 January 1985. The author first met Mr. Manning in the courtroom on the day of the hearing. The Judge granted counsel permission to consult with his client in private. The author claims that he explained his case to him, but that counsel did not take any notes. When the hearing resumed on the same day, counsel allegedly did not present all the facts to the judge and the jury. Furthermore, he did not challenge the jury, although "in-laws" and close acquaintances of the deceased allegedly were among the jury members. Thus, the author argues, the jury was biased against him.

2.3 On 1 February 1985, the author was found guilty of murder and sentenced to death. The author's appeal was dismissed by the Jamaican Court of Appeal on 14 October 1985. On 6 May 1991, the State party commuted the author's death sentence to life imprisonment.

2.4 With regard to the circumstances of the appeal, the author claims that he was not properly informed of the date of the hearing of his appeal. On 14 October 1985, counsel visited him and told him that his appeal had been dismissed earlier that day. On the next day, he received a letter from the registrar of the Court of Appeal informing him that his case was due to be heard in the week beginning 14 October 1985. According to the author, this meant that he was prevented from instructing his counsel and from attending the appeal personally. Although the author had appealed on the ground that he had not been given a fair trial, counsel had withdrawn that ground, allegedly without consulting with the author.

Complaint

3. Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation by Jamaica of article 14 of the Covenant.

State party's observations and author's comments

4. The State party, by submission, dated 20 July 1988, contends that the author's communication is inadmissible on the ground of non-exhaustion of domestic remedies, claiming that he could still petition the Judicial Committee of the Privy Council for leave of appeal. The State party adds that legal aid would be available for that purpose pursuant to section 3 of the Poor Prisoners' Defence Act.

5. In a submission dated 30 January 1989, the author's counsel explains that a petition for special leave to appeal was in fact filed with the Judicial Committee of the Privy Council on behalf of the author early in 1987. The application had been for interlocutory relief, to the effect that the Court of Appeal of Jamaica be ordered to issue a written judgement in the case. Notwithstanding the interlocutory nature of the application, the Privy Council dealt with it as a petition for leave to appeal and dismissed it on 19 February 1987, although no submissions had been made on behalf of the author on the merits of the case. Counsel therefore submits that all available domestic remedies have been exhausted.

6. In a further submission, dated 14 April 1989, the State party acknowledges that the author's petition for special leave to appeal to the Privy Council was dismissed. It reiterates, however, that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, since the author has not taken any action to pursue his constitutional remedies in the Jamaican Supreme (Constitutional) Court, pursuant to section 25 of the Jamaican Constitution.

Committee's admissibility decision

7.1 At its thirty-sixth session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to apply for constitutional redress. In the circumstances of the case, the Committee found that recourse to the Supreme (Constitutional) Court under section 25 of the Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

7.2 On 24 July 1989, accordingly, the Committee declared the communication admissible in respect of article 14 of the Covenant.

Review of admissibility decision

8. The State party, in its submission dated 10 January 1990, maintains that the communication is inadmissible since constitutional remedies under section 25 are still open to the author.

9. In his reply to the State party's submission, counsel submits that the constitutional remedy is not available in practice because of the author's lack of funds and the unavailability of legal aid.

10.1 The Committee observes that the same issues concerning admissibility have already been examined by the Committee in its views on communications Nos. 230/1987 (Raphael Henry v. Jamaica) b/ and 384/1988 (Aston Little v. Jamaica). c/ In the circumstances of those cases, the Committee concluded that a constitutional motion was not an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and that, accordingly, the Committee was not precluded from examining the merits.

10.2 In the instant case, considering that the State party does not provide legal aid for constitutional motions, the Committee finds that a constitutional motion would not constitute an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and thus confirms its decision on admissibility.

Examination of the merits

11.1 As to the substance of the author's allegation of violations of his human rights, the Committee notes with concern that the State party has confined itself to the observation that the Committee is not competent to evaluate issues of facts and evidence; it has not addressed the author's specific allegations that his right to a fair trial was violated. The Committee is of the opinion that the summary dismissal of the author's allegations, in general terms, does not meet the requirements of article 4, paragraph 2, of the Optional Protocol.

11.2 With respect to the alleged violations of article 14 of the Covenant, three issues are before the Committee: (a) whether the composition of the jury violated the author's right to a fair trial; (b) whether the author was allowed adequate time and facilities to prepare his defence; and (c) whether the author was denied effective representation during his appeal.

11.3 In respect of the first claim, the Committee notes that while the author alleges that the jury was biased because of the presence of acquaintances and "in-laws" of the deceased, his counsel did not raise any objections. The Committee finds therefore that this allegation has not been substantiated.

11.4 In respect of the second claim, the Committee recalls that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. Sufficient time and facilities must be granted to the accused and his counsel to prepare the defence for the trial; this requirement applies to all the stages of the judicial proceedings. The determination of what constitutes "adequate time and facilities" requires an assessment of the individual circumstances of each case. In the instant case, it is uncontested that the author's defence was prepared on the first day of the trial. The Committee cannot ascertain, however, whether the Court actually denied counsel adequate time for the preparation of the defence. Similarly, the material before the Committee does not disclose whether either the author or his counsel complained to the trial judge that the time or facilities were inadequate. The Committee therefore finds no violation of article 14, paragraph 3 (b), of the Covenant during the trial at first instance.

11.5 In respect of the third claim concerning the author's representation before the Court of Appeal, it is uncontested that the author was only informed about the date of the hearing after it had taken place. He was therefore unable to communicate with his representative with regard to the appeal. Taking into account the combination of circumstances in the instant case, the Committee is of the view that the appeal proceedings did not meet the requirements of a fair trial, under article 14, paragraph 1 of the Covenant.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee disclose a violation of article 14, paragraph 1, of the Covenant.

13. It is the view of the Committee that, in cases in which a capital sentence may be pronounced, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the opinion that Mr. Alrick Thomas is entitled to an appropriate remedy.

14. The Committee wishes to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] According to the judgement of the Court of Appeal, the murder occurred on 25 November 1984, and the author was arrested on the same day.

[b] See sect. B above, communication No. 230/1987, views adopted on 1 November 1991.

[c] See sect. J below, communication No. 283/1988, views adopted on 1 November 1991.

H. Communication No. 276/1988, Trevor Ellis v. Jamaica (views adopted on 28 July 1992, at the forty-fifth session)

Submitted by:	Trevor Ellis (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	1 March 1988
Date of decision on admissibility:	18 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 July 1992,

Having concluded its consideration of communication No. 276/1988, submitted to the Human Rights Committee on behalf of Trevor Ellis under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is Trevor Ellis, a Jamaican citizen born in 1958, at present awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights.

2.1 The author states that he was sentenced to death on 3 October 1980 after being convicted of having murdered a van driver (a newspaper distributor) on 22 December 1978. He alleges that he was convicted solely on the testimony of a single eyewitness, a female passenger in the van, who pointed him out at an identification parade held some six weeks after the crime. The witness identified the author as one of three men who, on the night of the murder, had been given a lift by the van driver, then shot him and subsequently raped her. The author was the only person arrested or prosecuted for the crime. Although there was no evidence that he had shot the victim or that he had been armed, he was convicted he states, on the basis of the principle of "common design". The author always maintained his innocence of the crime and, at the trial, two alibi witnesses testified that he was at home on the night of the murder.

2.2 The author's appeal was dismissed by the Jamaican Court of Appeal on 17 December 1982. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed without a hearing on 11 July 1985. Early in January 1988, a warrant for the execution of the author, on 14 January 1988, was issued, but this was stayed for reasons unknown. A further warrant for his execution on 8 March 1988 was served late in February 1988. a/

2.3 The author claims that in the course of his trial the judge misdirected the jury on the issue of identification and did not apply the principles set out in the leading case on the subject, Turnbull (1976) Cr. App. R.132. According to him the trial judge failed to give adequate instruction to the jury about the need for caution in an identification case or to point out to the jury that an identification witness might be subjectively convinced though objectively mistaken. It is also claimed that the author's legal aid lawyer did little pretrial preparation and failed to pursue adequately a number of points which arose during the trial. The failure of counsel to raise objections to these points at the time of the trial precluded their being considered on appeal.

2.4 The author's current counsel submits that Mr. Ellis' case bears some resemblance to the case of Oliver Whylie, b/ Junior Reid and Roy Dennis (all Jamaican citizens sentenced to death) in which the Judicial Committee of the Privy Council granted special leave to appeal on 8 October 1987, primarily on account of the large number of petitions reaching the Judicial Commitee from Jamaica that raise serious issues of inadequate directions to juries in capital cases where identification is in question.

Complaint

3. The author claims to be a victim of a violation by Jamaica of articles 6, 7 and 14 of the Covenant.

State party's observations and the author's comments thereon

4. The State party, by submission dated 26 October 1988, contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. In this connection, the State party notes that the author "has petitioned the Governor General for a stay of execution and that the Privy Council has recommended to the Governor General that a stay of execution should be granted pending the outcome of the representations made on his behalf". The State party does not explain what it understands by representations.

5.1 In his comments on the State party's submission, dated 22 December 1988, author's counsel argues that the State praty's contention with regard to the Privy Council's recommendation to the Governor General concerning the granting of stay of execution to Mr. Trevor Ellis fails to indicate whether the recommendation has been adopted by the Governor General, and, therefore, whether a stay of execution is in force.

5.2 It is further submitted that said recommendation has not been communicated to counsel and that counsel's petition to the Governor General, dated 2 March 1988, requesting a stay of execution, pending the outcome of a number of similar cases before the Judicial Committee of the Privy Council in London, has remained as yet unanswered.

5.3 Moreover, author's counsel observes that the remaining remedies are ineffective and the procedures for securing such remedies are unduly prolonged and uncertain; therefore, the present communication should not be deemed inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

Committee's admissibility decision

6.1 At its thirty-sixth session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to exhaust domestic remedies. In this connection, the Committee observed that a petition to the Governor General for a stay of execution is not a domestic remedy that can render a communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.2 On 18 July 1989, accordingly, the Committee declared the communication admissible.

Review of admissibility

7. The State party, in submissions dated 10 January 1990 and 4 September 1990, maintains that the communication is inadmissible. It submits that, pending the outcome of three other appeals before the Judicial Committee of the Privy Council regarding the issue of identification, the author is seeking to petition the Governor General for mercy under section 90 of the Jamaican Constitution. The State party further argues that remedies under sections 20 and 25 of the Constitution are still available to the author. Finally, it argues that the Committee is not competent to evaluate issues of facts and evidence.

8. Counsel, by submission of 10 April 1990, indicates that he has lodged a petition with the Governor General to allow the rehearing of the author's case under section 29 of the Judicature Act.

9.1 The Committee observes that a petition for mercy addressed to the Governor General cannot be considered a domestic remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Nor does the author's filing of a petition with the Governor General for a rehearing preclude the consideration of the communication by the Committee.

9.2 The Committee further refers to its decisions in communications Nos. 230/1987 and 283/1988 c/ and reaffirms that, in view of the absence of legal aid for constitutional motions, a constitutional motion does not, in the circumstances of this case, constitute an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

9.3 The Committee thus confirms its decision on admissibility.

Examination of the merits

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 Having considered the information before it, the Committee finds that the evidence discloses no violation of article 14 of the Covenant.

10.3 The Committee further finds that the evidence discloses no violation of article 7 of the Covenant.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of articles 7 and 14 of the International Covenant on Civil and Political Rights.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ By telegram of 2 March 1988 the Special Rapporteur of the Human Rights Committee on death penalty cases, Mr. Andreas Mavrommatis, requested the Jamaican Minister for Foreign Affairs to grant a stay of execution, to allow the Committee to consider Mr. Ellis' communication. On 8 March 1988 stay of execution was granted.

b/ Mr. Whylie's communication, No. 227/1987, was declared inadmissible by the Human Rights Committee on 26 July 1988, on the ground of non-exhaustion of domestic remedies.

c/ See sect. B above, Raphael Henry v. Jamaica, views adopted on 1 November 1991, paras. 7.3-7.6; and sect. J below, Aston Little v. Jamaica, views adopted on 1 November 1991, paras. 7.2-7.6.

I. Communication No. 277/1988, Juan Terán Jijón v. Ecuador (views adopted on 26 March 1992, at the forty-fourth session)*

Submitted by:	Marieta Terán Jijón, subsequently joined by her son, Juan Fernando Terán Jijón
Alleged victim:	Juan Fernando Terán Jijón
State party:	Ecuador
Date of communication:	21 January 1988
Date of decision on admissibility:	4 July 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 1992,

Having concluded its consideration of communication No. 277/1988, submitted to the Human Rights Committee by Mrs. Marieta Terán Jijón, subsequently joined by her son, Juan Fernando Terán Jijón, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.**

Facts as submitted by the author

1.1 The author of the communication is Marieta Terán Jijón, an Ecuadorian citizen born in 1929, residing in Quito, Ecuador. She submits the communication on behalf of her son, Juan Fernando Terán Jijón, an Ecuadorian citizen born in 1966, at the time of submission of the communication (21 January 1988) detained at the Penal García Moreno in Quito, Ecuador.

1.2 After two years of detention, Juan Fernando Terán Jijón was released; he left Ecuador in August 1988 and currently resides in Mexico, where he pursues university studies. After his release, Mr. Terán Jijón confirmed the exactitude of his mother's submissions and joined the communication as co-author, expressing the wish that the Committee proceed with the examination of the case.

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* Pursuant to rule 84, paragraph 1, of the Committee's rules of procedure, Mr. Julio Prado Vallejo did not take part in the examination of the communication and the adoption of the Committee's views.

** An individual opinion submitted by Mr. Bertil Wennergren is appended.

1.3 Juan Fernando Terán Jijón was arrested on 7 March 1986 in Quito by members of an antisubversive police unit known as Escuadrón Volante; according to the author, he was about to visit a relative. He claims to have been kept incommunicado for 5 days, shackled and blindfolded, subjected to physical and mental torture, and forced to sign more than 10 blank sheets of paper. He was then transferred to the García Moreno prison. The report of a medical examination carried out in the infirmary of the prison on 13 March 1986 records haematomas and skin lesions all over his body.

1.4 The author was charged with participation in the crime of bank robbery, perpetrated on 7 March 1986 against the Banco de Pichincha and the Caja de Crédito Agrícola of Sangolquí. He denies any involvement in the offence.

1.5 On 27 January 1987 the Tribunal Segundo Penal de Pichincha convicted and sentenced him to one year of imprisonment. Although this term was fully served on 7 March 1987 and the Tribunal ordered his release on 9 March 1987, he was not released but instead reindicted, allegedly on the same facts and for the same offence.

1.6 With regard to the issue of exhaustion of domestic remedies, Mrs. Terán Jijón states that she instituted an action for amparo, appealed to the Tribunal de Garantías Constitucionales and to the National Congress. On 18 March 1988, her son was released, pending the adjudication of other criminal proceedings, involving charges of illegal possession of firearms. On 22 August 1989, the Fourth Chamber of the Superior Court declared the charges null and void; it found that the reindictment of the author in January 1987 violated article 160 of the Code of Criminal Procedure, according to which no one shall be tried or convicted more than once for the same offence.

Complaint

2. It is claimed that Juan Terán Jijón is a victim of violations by Ecuador of article 7 of the Covenant, because he was subjected to torture and ill-treatment following his arrest, partly in order to extract a confession from him and in order to force him to sign blank sheets of paper, about whose subsequent use he was kept in the dark; the author adds that he was denied access to counsel. It is further claimed that he was a victim of a violation of article 9, paragraph 1, because he was subjected to arbitrary arrest and detention, since he allegedly was not involved in the bank robbery; in this context, it is submitted that the police report incriminating him was manipulated by the Ministry responsible for the police (Ministerio de Gobierno y Policía). The author further alleges a violation of article 9, paragraph 3, because he was not brought promptly before a judge. The fact of having been reindicted for the same facts and the same offence is said to amount to a violation of the principle *ne bis in idem*.

State party's information and observations

3.1 The State party contends that on 7 March 1986 Juan Terán Jijón, together with a group of armed men belonging to the terrorist movement "Alfaro vive", robbed the bank of Pichincha and the Caja de Crédito Agrícola of Sangolquí.

3.2 According to the police report, eight persons were involved in the hold-up of the two banks, escaping in a pick-up truck, of which the author was said to be the driver. A police car which followed them was able to arrest three of them after a shoot-out. The remaining five were apprehended later. The report does not specify when or where Mr. Terán Jijón was apprehended.

3.3 The State party denies that Mr. Terán Jijón was at any time subjected to ill-treatment in detention. It further contends that the judicial proceedings against the author were at all times conducted in conformity with the procedures established under Ecuadorian law.

3.4 With respect to the second indictment against Mr. Terán Jijón, the State party explains that it was not based on the charge of bank robbery, but rather on the charge of illegal possession of firearms.

Issues and proceedings before the Committee

4.1 During its thirty-ninth session, the Committee considered the admissibility of the communication and noted that the State party, while addressing issues of merit, had not shown whether any investigation with regard to the allegations of torture had taken place or was in progress, nor contended that effective domestic remedies remained open to the author. In the circumstances, the Committee concluded that the requirements of article 5, paragraph 2 (b), of the Optional Protocol had been met.

4.2 The Committee further noted that the facts as submitted appeared to raise issues under provisions of the Covenant which had not specifically been invoked by the authors. It reiterated that whereas authors must invoke the substantive rights contained in the Covenant, they are not required, for purposes of the Optional Protocol, necessarily to do so by reference to specific articles of the Covenant. So as to assist the State party in preparing its submission under article 4, paragraph 2, of the Optional Protocol, the Committee suggested that the State party should address the allegations (a) under article 10 of the Covenant, that Juan Terán Jijón was subjected to ill-treatment during detention, (b) under article 14, paragraph 3 (b), that he was denied access to a lawyer after his arrest, (c) under article 14, paragraph 3 (g), that he was forced to sign blanco confessions, and (d) that his indictment in January 1987 corresponded to the same offence for which he had already been tried and convicted, which appeared to raise issues under article 14, paragraph 7.

4.3 On 4 July 1990, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 9, 10 and 14 of the Covenant.

4.4 The State party did not reply to the Committee's request for information and observations, in spite of a reminder addressed to it on 29 July 1991.

5.1 The Committee has considered the communication in the light of all the information made available by the parties, as required under article 5, paragraph 1, of the Optional Protocol. Concerning the substance of the authors' allegations, the Committee notes with concern that the State party has confined itself to statements of a general nature, by categorically denying that the author was at any time subjected to ill-treatment, and by asserting that the proceedings complied with the requirements of Ecuadorian law. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to furnish the Committee with sufficient detail about the measures, if any, taken to remedy the situation. The dismissal of the allegations in general terms, as in the present case, does not meet the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the authors' allegations, to the extent that they have been substantiated.

5.2 Mr. Terán has claimed that he was subjected to torture and ill-treatment during detention, which included remaining shackled and blind-folded for five days; the State party dismisses this claim. The Committee notes that Mr. Terán has submitted corroborative evidence in support of his allegation; the medical report, prepared on 13 March 1986, i.e. shortly after his arrest, records haematomas and numerous skin lesions ("escoriaciones") all over his body. Moreover, the author has submitted that he was forced to sign more than 10 blank sheets of paper. In the Committee's opinion, this evidence is sufficiently compelling to justify the conclusion that he was subjected to treatment prohibited under article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person, in violation of article 10, paragraph 1.

5.3 In respect of the authors' claim of a violation of article 9, paragraph 1, the Committee lacks sufficient evidence to the effect that Mr. Terán's arrest was arbitrary and not based on grounds established by law. On the other hand, the Committee notes that Mr. Terán was kept in detention on the basis of a second indictment, subsequently quashed, from 9 March 1987 until 18 March 1988. In the circumstances, the Committee finds that this continuation of his detention for one year following the release order of 9 March 1987 constituted illegal detention within the meaning of article 9, paragraph 1, of the Covenant. Moreover, Mr. Terán has claimed and the State party has not denied that he was kept incommunicado for five days without being brought before a judge and without having access to counsel. The Committee considers that this entails a violation of article 9, paragraph 3.

5.4 With regard to Mr. Terán's contention that the State party violated article 14, paragraph 7, of the Covenant, because he was reindicted for the same events that had been the basis of his first trial and conviction, the Committee notes that article 14, paragraph 7, proscribes re-trial or punishment for an offence for which the person has already been convicted or acquitted. In the instant case, while the second indictment concerned a specific element of the same matter examined in the initial trial, Mr. Terán was not tried or convicted a second time, since the Superior Court quashed the indictment, thus vindicating the principle of ne bis in idem. Accordingly, the Committee finds that there has been no violation of article 14, paragraph 7, of the Covenant.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 7, 9, paragraphs 1 and 3 and 10, paragraph 1, of the Covenant.

7. The Committee is of the view that Juan Fernando Terán Jijón is entitled to a remedy, including appropriate compensation. The State party is under an obligation to investigate the use to which the more than ten sheets of paper signed by Mr. Terán Jijón under duress were put, to see to it that these documents are returned to him or destroyed, and to ensure that similar violations do not occur in the future.

8. The Committee would appreciate receiving information, within 90 days, from the State party in respect of measures adopted pursuant to the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Appendix

Individual opinion of Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's views on communication No. 277/1988 (Marieta and Juan Fernando Terán Jijón v. Ecuador)

I concur with the Committee's views, with the exception of the findings, in paragraph 5.4, on Mr. Terán's claim that he was forced to sign 10 blank sheets of paper during the interrogation that took place when he was kept incommunicado in detention and subjected to maltreatment. The Committee has expressed the view, in paragraph 5.2, that the evidence submitted is sufficiently compelling to justify the conclusion that Mr. Terán Jijón was subjected to treatment prohibited under article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person (in violation of art. 10, para. 1). However, the Committee found that the element of signing 10 blank sheets of paper did not raise an issue under article 14, paragraph 3 (g). In that respect, I disagree.

I first note that the State party has not addressed Mr. Teran's allegation that he was forced to sign these blank sheets. In the circumstances, there is sufficient reason to believe that the allegation is based on verifiable events. I therefore believe that the Committee's findings should have been made on the basis of these facts as found. Pursuant to article 14, paragraph 3 (g), everyone shall, in the determination of any criminal charge against him, be entitled not to be compelled to testify against himself or to confess guilt. This means that during criminal proceedings, neither the prosecutor nor the judge nor anyone else may threaten the accused or otherwise try to exert pressure on him, so as to force him to testify against himself or to confess guilt.

It also would violate the principle of objectivity and impartiality if such incidents were to occur; it would further entail a violation of article 14, paragraph 3 (g), if testimony or a confession obtained through compulsion in pretrial interrogation were to be introduced as evidence. Article 15 of the Convention against Torture confirms this view by prescribing that each State party shall ensure that any statement which is found to have been made as a result of torture shall not be introduced as evidence in any judicial proceedings, except against an individual accused of torture, as evidence that the statement was made.

Nevertheless, it is difficult to avoid that an incrimination or confession, in spite of their not being given any weight as evidence, cast a shadow on the accused. All attempts to compel a person to incriminate him or herself or to confess guilt should thus be prevented. It is not unusual that, as a method of compulsion, an interrogator forces the accused to sign blank papers, insinuating that incriminations or confessions of crimes more serious than the ones he is accused of, would be added. In so doing, the interrogator of course violates articles 7 and 10, paragraph 1, but, in my opinion, he also violates article 14, paragraph 3 (g). That conclusion follows my conviction that no form of compulsion to make an individual incriminate him or herself or to confess guilt, can be accepted; this is so regardless of whether it is an express incrimination or merely a hypothetical one. There is always the risk that what has been signed or recorded may exercise undue influence on the issue of proof in the determination of criminal charges at a subsequent stage.

Bertil WENNERGREN

J. Communication No. 283/1988, Aston Little v. Jamaica (views adopted on 1 November 1991, at the forty-third session)

Submitted by:	Aston Little (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	19 January 1988 (initial submission)
Date of decision on admissibility:	24 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 1991,

Having considered communication No. 283/1988, submitted to the Committee by Aston Little under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following views under article 5, paragraph 4, of the Optional Protocol.

Facts as presented by the author

1. The author of the communication is Aston Little, a Jamaican citizen born on 6 February 1952 at Maroon Town, Jamaica, and currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 6, 7, 10 and 14, paragraphs 1, 2, 3 (b), (d), (e) and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was arrested on 12 January 1982 on suspicion on having murdered, on 9 January 1982, one Oswald Dawes. After his apprehension, the arresting officer allegedly hit him with his gun. The prosecution contended that the author had made a statement to the arresting officer, one Detective Corporal C., to the effect that he was not the only one involved, and that one O.B. and her daughter, L.D., also knew about the crime. The author denied ever having made such a statement. Subsequently, the investigating officer suggested to him that he should plead guilty to the charge of murder; when the author professed his innocence, the officer threatened to use O.B., who had been charged along with the author, as the prosecution's principal witness against him.

2.2 The author was detained until 16 February 1982, when he was released on bail; on 31 March 1983 he was again remanded in custody. On 24 April 1984 he was charged with the murder of Mr. Dawes; he went on trial in the Circuit Court of Spanish Town between 23 and 25 July 1984. Upon conclusion of the trial, the jury at first did not return a unanimous verdict; having been told by the judge to reconsider the evidence, it again retired and thereafter returned a guilty verdict. During the trial, the woman who had initially been charged with him, O.B., did in fact testify against the author, and it was, inter alia, on the basis of her testimony that he was convicted.

2.3 On 31 July 1984, the author appealed to the Court of Appeal of Jamaica on the grounds that the judge had misdirected the jury (a) on the issue of corroborative evidence, and (b) on the value of the author's alleged confession made after his arrest. On 20 January 1986, the appeal was dismissed. Early in 1989, the author petitioned the Judicial Committee of the Privy Council for special leave to appeal; the petition was dismissed on 5 May 1989. With this, it is submitted, available domestic remedies have been exhausted.

Complaint

3.1 The author submits that the conduct of the trial violated article 14, paragraph 1, of the Covenant, because the trial judge's instructions to the jury on the issue of "corroborative evidence" were inadequate. It is submitted that these directions were vitally important given that (a) the testimony of O.B. provided the only evidence against the author (b) her evidence was inconsistent with respect to the author's possession of the knife with which Mr. Dawes had been stabbed; and (c) no motive on the part of the author was ever established. Counsel further submits that the trial judge wrongly directed the jury that the statement made by the author in the presence of Det. Corp. C. ("ah no mi alone involve. L. and O. no about it too") amounted to a confession of murder: these words could not have amounted, in law, to a confession. It is further submitted that the judge should have directed or warned the jury that a mere "involvement" in any crime cannot necessarily be deemed, in the absence of further evidence, to amount to participation sufficient to establish guilt. Pursuant to the judge's instructions, the jury had to convict Mr. Little if it was convinced that he had played some part in the overall enterprise but remained unsure as to whether he was a principal or an abettor.

3.2 The author further claims that he was denied adequate time and facilities for the preparation of his defence, contrary to article 14, paragraph 3 (b), as well as inadequate facilities to cross-examine witnesses, contrary to article 14, paragraph 3 (e). He states that he was assigned two representatives, Mr. A.S. and his assistant, Ms. H.M.; although they were assigned to the case prior to the hearing before the examining magistrate, the author only had a brief interview with Ms. H.M. prior to the preliminary hearing. He further only met once for about 30 minutes with Mr. A.S. about one month before the trial. The author submits that his representatives were inexperienced and did not adequately consult with him in preparation of the defence. Thus,

(a) The statements of the prosecution witnesses were not reviewed with the author;

(b) His comments on the case of the prosecution were not acted upon by the representatives;

(c) He had only 10 minutes at the end of each trial day to consult with counsel;

(d) Inconsistencies in the testimony of O.B. were picked up by the author and notified to counsel, who failed to take any action;

(e) Counsel initially intended to call the author to testify but then changed his mind;

(f) At least one witness identified by the author as capable of providing relevant and credible evidence on his behalf was not called by A.S., who indicated that this was unnecessary, without however providing an explanation;

(g) The author pointed out that the distance between the bar where he had been drinking and the locus in quo was such that he could not possibly have killed Mr. Dawes and made it in time for the beginning of his work shift at 7 a.m. The author's presence in the bar and on the bus to work could have been established, but counsel did not investigate the matter, in spite of requests to this effect formulated by the author.

3.3 The author acknowledges that the Court of Appeal assigned a lawyer, Mr. W.C., to him for the preparation of the appeal. He submits, however, that he was not consulted by this lawyer either before, during or after the appeal; he addressed several letters to W.C. before and after the hearing of the appeal, requesting an interview, but his letters went unanswered. It is submitted that this situation constitutes a violation of article 14, paragraphs 3 (b), (d) and 5, of the Covenant.

3.4 Counsel claims that the delays in the judicial proceedings in his client's case constitute violations of articles 7, 10 and 14, paragraphs 3 (c) and 5, of the Covenant. Thus, two years and six months passed between arrest and trial and sentence, one year and seven months between conviction and the dismissal of the appeal, and three years and four months between the appeal and the dismissal of Mr. Little's petition for special leave to appeal to the Judicial Committee of the Privy Council.

3.5 In this context, it is submitted that the Court of Appeal of Jamaica never issued a properly reasoned judgment in the case. It was only on 31 January 1989 that counsel representing the author before the Judicial Committee received a note from the Registrar of the Court of Appeal of Jamaica, signed by one of the judges on appeal. This note merely states that the Court of Appeal considered counsel's submissions to be devoid of merit, that there was no ground on which an application for leave to appeal could be based, and that the application was, accordingly, refused by oral judgement. Council submits that this note does not constitute proper grounds for the dismissal of the appeal, as it fails to address the central issue of corroboration, namely whether the statement allegedly given by Mr. Little to the police after his arrest was capable of corroborating the evidence of the prosecution's only witness, O.B.

3.6 The author further submits that the conditions of his detention are inhuman and degrading, amounting to a violation of articles 7 and 10 of the Covenant. He confirms the findings of a recent report on prison conditions in Jamaica, including the death row section of St. Catherine District Prison to which he is confined, prepared by a United States non-governmental organization. Specifically, he complains that prison conditions are extremely insalubrious, with waste littering the area and constant unpleasant odours. A slop bucket in his cell, filled with human excrement, waste and stagnant water is only emptied once a day. Inmates are required to share eating utensils made of plastic, which are not properly cleaned. Finally, the daily time devoted to recreational activities is often limited to half an hour. Combined, these conditions are said to violate the author's inherent dignity, protected by article 10, paragraph 1. Furthermore, the treatment allegedly constitutes cruel, inhuman and degrading treatment within the meaning of article 7, particularly if taking into consideration the inherent uncertainty of the author's position as a person under sentence of death, prolonged by the delays in the judicial proceedings referred to in paragraph 3.4 above. Finally, the mental anguish and anxiety resulting from prolonged detention on death row in themselves are said to violate article 7. a/

3.7 With regard to the requirement of exhaustion of domestic remedies in respect of the author's claim under article 7 of the Covenant, counsel refers to the decision of the Judicial Committee of the Privy Council in the case of Noel Riley et al. v. Attorney General, where it had been held that whatever the reasons for or length of delay in executing a sentence of death lawfully imposed, the delay could afford no ground for holding the execution of the sentence to be in contravention of section 17 of the Jamaican Constitution (similar to article 7 of the Covenant). b/ Counsel submits that, on the basis of judicial precedent, any constitutional motion based on this ground would inevitably fail.

3.8 Furthermore, counsel submits that a constitutional motion based on alleged violations of the right to a fair trial (sections 20 and 25 of the Jamaican Constitution) would not be an available and effective remedy within the meaning of the Optional Protocol. If the State party submits that Mr. Little should argue before a court of lower jurisdiction in Jamaica issues which he had already placed before the Judicial Committee of the Privy Council, then, as noted by the International Court of Justice in a recent decision, the State party should provide authority for that contention. c/ More specifically, counsel observes that no legal aid is provided for constitutional motions pursuant to the Poor Prisoners' Defence Act (1961) or the Poor Persons (Legal Proceedings) Act 1941, appendix 6, and Associated Rules. The Poor Prisoners' Defence Act only allows for the grant of legal aid certificates in respect of "appropriate proceedings", defined as the preliminary examination, the trial or any subsequent appeal from conviction. Constitutional motions are not appeals from conviction but applications for constitutional redress. As the Poor Persons (Legal Proceedings) Act 1941 was enacted before the Jamaican Constitution, the "legal proceedings" referred to in the Rules do not include applications to the Supreme Court. In any event, the author has not succeeded in securing legal representation in Jamaica to argue a constitutional motion on a pro bono basis.

State party's observations

4. The State party, in a submission of 21 June 1989, contends that the communication is inadmissible because of the author's failure to pursue remedies available to him under the Jamaican Constitution. It notes that the provisions of the Covenant invoked by the author are coterminous with the rights protected by sections 14, 17 and 20 of the Jamaican Constitution. Under section 25 of the Constitution, anyone who alleges that any of his

fundamental rights has been, is being or is likely to be contravened in relation to him, may, without prejudice to any other available action with respect to the same matter, apply for constitutional redress.

Committee's admissibility considerations and decision

5.1 At its thirty-sixth session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to apply for constitutional redress. In the circumstances of the case, the Committee found that recourse to the Constitutional Court under section 25 of the Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 On 24 July 1989, the Committee declared the communication admissible in so far as it appeared to raise issues under article 14 of the Covenant.

State party's objections to the admissibility decision and the Committee's request for further clarification

6.1 The State party, by submission of 10 January 1990, rejects the Committee's findings on admissibility and challenges the reasoning described in paragraph 5.1 above. It argues, in particular, that the Committee's arguments reflect a misunderstanding of the relevant Jamaican law, especially the operation of section 25 (1) and (2) of the Constitution. In its opinion, the proviso to section 25 (2) cannot apply to the case, as the constitutional remedy under section 25 is distinct from and independent of any appellate remedies pertaining to a criminal charge. The State party refers to the case of Noel Riley v. Attorney General (see para. 3.7), in which the appellant, after exhausting his criminal appeals, filed a constitutional motion alleging violations of certain of his constitutionally guaranteed rights. The decision of the Supreme Court was in turn appealed to the Court of Appeal and to the Judicial Committee of the Privy Council.

6.2 In a further submission dated 10 October 1990, the State party argues that the proviso to section 25 (2) would only be applicable to a person whose criminal appeal had been adjudicated by the Judicial Committee of the Privy Council if the right whose violation has been alleged, has been the subject of judicial determination by the Judicial Committee. In Mr. Little's case, the State party notes, the issue of a violation of the right to a fair trial was not determined by the Judicial Committee. In the State party's opinion, the Committee's admissibility decision

> "would render meaningless and nugatory the hard earned constitutional rights of Jamaicans and persons in Jamaica by its failure to distinguish between the right to appeal against the verdict and sentence of the court in a criminal case and the "brand new right" to apply for constitutional redress granted in 1962."

6.3 As to the author's claim concerning inadequate preparation of his defence, the State party notes that article 14, paragraph 3 (b), of the Covenant is coterminous with section 20, paragraph 6 (b), of the Jamaican Constitution, and adds that the author should have seized the Supreme Court of the alleged violation of his rights under this provision.

6.4 As to the author's allegation that he was denied a fair trial because the judge misdirected the jury on the issue of "corroborative evidence", the State party, by reference to the Committee's jurisprudence, d/ submits that this claim seeks to raise issues of evaluation of facts and evidence in the case, which the Committee has no competence to evaluate.

6.5 In June 1991, counsel informed the Committee that the Supreme (Constitutional) Court had rendered its judgement in the cases of Earl Pratt and Ivan Morgan, on whose behalf constitutional motions had been filed earlier in 1991. e/ In the light of this judgement and in order better to appreciate whether recourse to the Supreme (Constitutional) Court was a remedy which the author had to exhaust for purposes of the Optional Protocol, the Committee adopted an interlocutory decision during its forty-second session, on 24 July 1991. In this decision, the State party was requested to provide detailed information on the availability of legal aid or free legal representation for the purpose of constitutional motions, as well as examples of such cases in which legal aid might have been granted or free legal representation might have been procured by applicants. The State party did not forward this information within the deadline set by the Committee, that is, 26 September 1991. By submission of 10 October 1991, the State party replied that no provision for legal aid in respect of constitutional motions exists under Jamaican law, and that the Covenant does not require the States parties to provide legal aid for this purpose.

Post-admissibility proceedings and examination of merits

7.1 In the light of the above, the Committee decides to proceed with its consideration of the communication. It has taken note of the State party's arguments on admissibility formulated after the Committee's decision declaring the communication admissible in so far as it raised issues under article 14 of the Covenant, and the author's further claims concerning violations of articles 7 and 10 of the Covenant, which were only substantiated after the Committee's admissibility decision.

7.2 The State party argues that the provision to section 25 (2) of the Jamaican Constitution cannot apply in the case, as the alleged breach of the right to a fair trial was not placed before the Judicial Committee of the Privy Council and thus not subject to judicial determination by that body. Based on the material placed before the Committee by the author, this statement would appear to be misleading. The author's petition to the Judicial Committee, dated 23 January 1989, submits that he was the victim of a miscarriage of justice. The Committee observes that the issue of whether or not a particular claim was the subject of a criminal appeal should not necessarily depend upon the semantic expression given to a claim, but on its underlying reasons. From this broader perspective, Mr. Little was in fact also complaining to the Judicial Committee of the Privy Council that his trial was unfair, in violation of section 20 of the Jamaican Constitution. Furthermore, the courts of every State party should ex officio test whether the lower court proceedings observed all the guarantees of a fair trial, a fortiori in capital punishment cases.

7.3 The Committee recalls that by submission of 10 October 1991, the State party indicated that legal aid is not provided for constitutional motions. In the view of the Committee, this supports the finding, made in its decision on admissibility, that a constitutional motion is not an available remedy which must be exhausted for purposes of the Optional Protocol. In this context, the Committee observes that it is not the author's indigence which absolves him from pursuing constitutional remedies, but the State party's unwillingness or inability to provide legal aid for this purpose.

7.4 The State party claims that it has no obligation under the Covenant to make legal aid available in respect of constitutional motions, as such motions do not involve the determination of a criminal charge, as required by article 14, paragraph 3 (d), of the Covenant. But the issue before the Committee has not been raised in the context of article 14, paragraph 3 (d), but only in the context of whether domestic remedies have been exhausted.

7.5 The Committee further notes that the author was arrested in 1982, tried and convicted in 1984, and that his appeal was dismissed in 1986. The Committee deems that for purposes of article 5, paragraph 2 (b), of the Optional Protocol, a further appeal to the Supreme (Constitutional) Court would, in the circumstances of this case, entail an unreasonable prolongation of the application of domestic remedies.

7.6 For the above reasons, the Committee maintains that a constitutional motion does not constitute a remedy which is both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Accordingly, there is no reason to reverse its decision on admissibility of 24 July 1989, as far as article 14 is concerned.

7.7 With regard to the author's allegations of ill-treatment during detention, the Committee notes that the substantiation thereof was not submitted by the author until after the Committee's decision declaring the communication admissible with respect to article 14 of the Covenant. Moreover, the Committee observes that the issues concerning the conditions of detention on death row and the question whether prolonged detention on death row constitutes inhuman and degrading treatment were not placed before the Jamaican courts, nor brought before any other competent Jamaican authority. Since domestic remedies in this respect have not been exhausted, the Committee is precluded from considering these allegations on the merits.

8.1 With respect to the alleged violation of article 14, three issues are before the Committee: (a) whether the judge's instructions to the jury violated the author's right to a fair trial; (b) whether the author had adequate time and facilities for the preparation of his defence, and (c) whether any violations of the Covenant ensued from the Court of Appeal's failure to issue a written judgement after dismissing his appeal.

8.2 Inasmuch as the alleged inadequacy of, and mistakes in, the judge's instructions to the jury are concerned, the Committee reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in any particular case. It is not in principle for the Committee to make such an evaluation or to review specific instructions to the jury, unless it can be ascertained that said instructions were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. On the basis of the material placed before it, the Committee finds no evidence that the author's trial suffered from such defects.

8.3 The right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial; this requirement applies to all the stages of the judicial proceedings. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. In the instant case, it is uncontested that the author did not have more than half an hour for consultation with counsel prior to the trial and approximately the same amount of time for consultation during the trial; it is further unchallenged that he was unable to consult with counsel prior to and during the appeal, and that he was unable to instruct his representative for the appeal.

8.4 On the basis of the material placed before it, and bearing in mind particularly that this is a capital punishment case and that the author was unable to review the statements of the prosecution's witnesses with counsel, the Committee considers that the time for consultation was insufficient to ensure adequate preparation of the defence, in respect of both trial and appeal, and that the requirements of article 14, paragraph 3 (b), were not met. As a result, article 14, paragraph 3 (e), was also violated, since the author was unable to obtain the testimony of a witness on his behalf under the same conditions as testimony of witnesses against him. On the other hand, the material before the Committee does not suffice for a finding of a violation of article 14, paragraph 3 (d), in respect of the conduct of the appeal: this provision does not entitle the accused to choose counsel provided to him free of charge, and while counsel must ensure effective representation in the interests of justice, there is no evidence that the author's counsel acted negligently in the conduct of the appeal itself.

8.5 It remains for the Committee to decide whether the failure of the Court of Appeal of Jamaica to issue a written judgement violated any of the author's rights under the Covenant. Article 14, paragraph 5, of the Covenant guarantees the right of convicted persons to have the conviction and sentence reviewed "by a higher tribunal according to law". In order to enjoy the effective exercise of this right, a convicted person is entitled to have, within a reasonable time, access to written judgements, duly reasoned, for all instances of appeal. To the extent that the Jamaican Court of Appeal has not, more than five years after the dismissal of Mr. Little's appeal, issued a reasoned judgement, he has been denied the possibility of an effective appeal to the Judicial Committee of the Privy Council, and is a victim of a violation of article 14, paragraph 5, of the Covenant.

8.6 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal". *f*/ In the present case, since the final sentence of death was passed without having met the requirements for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee disclose a violation of article 14, paragraphs 3 (b) and (e), and 5, the latter read in conjunction with paragraph 3 (c), and consequently of article 6 of the Covenant.

10. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Aston Little, a victim of violations of article 14, and consequently of article 6, is entitled, according to article 2, paragraph 3 (a), of the Covenant, to an effective remedy, in this case entailing his release; the State party is under an obligation to take measures to ensure that similar violations do not occur in the future.

11. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ Counsel refers to the decision of the European Court of Human Rights in the case of Soering v. United Kingdom, where the "death row phenomenon" was considered in terms of inhuman and degrading treatment.

b/ See 1982 3 A.E.R. 469.

c/ Elettronica Sicula S.p.A., ICJ Reports 1989, p. 59, appendix 5.

d/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex XI, sect. S, communication No. 369/1989, G.S. v. Jamaica, decision of 8 November 1989, para. 3.2.

e/ See ibid., Forty-fourth Session, Supplement No. 40 (A/44/40), annex X, sect. F, communications Nos. 210/1986 and 225/1987, views adopted on 6 April 1989.

f/ Ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, para. 7.

K. Communication No. 289/1988, Dieter Wolf v. Panama (views adopted on 26 March 1992, at the forty-fourth session)

Submitted by:	Dieter Wolf
Alleged victim:	The author
State party:	Panama
Date of communication:	30 January 1988
Date of decision on admissibility:	27 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 1992,

Having concluded its consideration of communication No. 289/1988, submitted to the Human Rights Committee by Mr. Dieter Wolf under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication is Dieter Wolf, a German citizen who, at the time of his initial submission to the Committee, was detained at the Isla de Coiba penitentiary in Panama. In September 1988, he was released and allowed to leave the country; since July 1989, he has resided in Germany. By letter of 2 July 1990, he requested the Committee to proceed with the examination of his communication. The author claims that his human rights have been violated by the authorities of Panama. Although he does not invoke violations of specific provisions of the International Covenant on Civil and Political Rights, it appears from the context of his submissions that he claims violations of articles 9, 10 and 14 of the Covenant.

Facts as submitted by the author

2.1 The author indicates that he was arrested on 14 January 1984 on charges of having issued a total of 12 uncovered cheques, for amounts ranging from US$ 25 to $3,000. He explains that under article 281 of the Panamanian Criminal Code, individuals who issue uncovered cheques are entitled to a "grace period" of 48 hours to settle their debts, so as to avoid arrest and detention. The author was not given this grace period but was instead immediately imprisoned at the Modelo prison. When he complained and invoked article 281 of the Criminal Code, he was transferred 300 kilometres away to the island of Coiba, which houses a penitentiary for inmates sentenced to hard labour. He claims that he has never been brought before a judge.

2.2 The author insists that when he was transferred to Coiba, no judgement against him had been delivered. Furthermore, although he had requested legal assistance, he was not given access to legal counsel. If legal counsel was ever assigned in his case, he never had any contact with him.

2.3 As to the judicial proceedings in his case, the author notes that 11 of the above-mentioned cases of alleged fraud were joined by the court of first instance (Juzgado Quinto). In September 1985, the judge sentenced him to three years and seven months of imprisonment on nine counts of cheque fraud, while acquitting him on two counts. The author submits that no public hearing took place, and that he was unable to attend court, since he was detained at Coiba prison.

2.4 The author himself prepared and filed the appeal against the conviction, but surmises that this was never seen by the Court of Appeal. He subsequently learned that the appeal had been dismissed on an unspecified date, although he was never able to see the written judgement. He then wrote to the court and requested the assignment of a legal aid representative, so as to be able to appeal to the Court of Cassation; he did not receive any reply.

2.5 With regard to the proceedings concerning a twelfth cheque, issued in the amount of $169 to the order of a local supermarket, the author states that he was tried by the First Criminal Court (Juzgado Primero) of San Miguelito, although, under applicable Panamanian law, this case should also have been joined with the other ones. In respect of this case, the author explains that he received a notice of trial in October 1984, when detained at Coiba, without the text of the indictment. He was subsequently kept in the dark about the course of the proceedings and not called to appear before the judge. The Court passed judgement on 15 September 1988, four and a half years after his arrest.

2.6 In respect of both cases pending before the Juzgado Quinto and the Juzgado Primero of San Miguelito, the author posted bail on 14 March 1986 for a total of $4,200. On an unspecified date in the spring of 1986, he was released on bail.

2.7 In August 1986, the author was rearrested and charged with issuing two more uncovered cheques. Bail was revoked, and the author returned to prison. The two new cases were assigned to the Eighth Criminal Court (Juzgado Octavo) of Panama. The author submits that, as in the other cases, no oral and public hearing took place, that he was denied access to counsel, and that he was informed of the judgement against him in July or August 1988, when still detained at Coiba prison.

2.8 The author notes that he informed the Embassy of the Federal Republic of Germany of his arrest. During his brief detention at the Modelo prison, he was not allowed to speak without supervision with officials from the Embassy. After the Embassy lodged a formal protest with the Foreign Ministry of Panama, he was allegedly ill-treated and confined to a special cell, together with a mentally disturbed prisoner, who allegedly had killed several other inmates. In the same context, the author states that all his property was stolen in the prison, and that he was denied food for five days. Finally, he contends that officials of the German Embassy were denied the right to visit him at Coiba prison.

Complaint

3.1 The author claims that, in each of the criminal cases against him, he was denied a fair and public hearing by a competent, independent and impartial tribunal, in that he was not heard personally and not served sufficiently motivated indictments. He further complains that, at all times, he was denied access to legal counsel and that he was never brought before a judge; he emphasizes that these elements constitute not only violations of the Covenant but also serious violations of Panamanian law.

3.2 It is further submitted that the judicial proceedings in the case were unreasonably prolonged: in particular, the Juzgado Primero of San Miguelito only rendered its judgement in respect of the allegedly uncovered cheque of $169 in September 1988, over four and a half years after Mr. Wolf's arrest.

3.3 As to the conditions of detention, the author complains about ill-treatment in the Modelo prison (see para. 2.8 above). He adds that he had to perform forced labour at Coiba prison although no sentence had been pronounced against him. In the latter context, he claims, in general terms, that inmates on Coiba are physically abused, beaten, tied to trees, denied food and obliged to buy some of their food from the prison commander, who is said to confiscate 40 per cent of the food sent from Panama City and then sell it to the inmates.

State party's information and observations

4.1 The State party contends, in submissions made both before and after the Committee's decision on admissibility, that the communication is inadmissible on the ground of non-exhaustion of domestic remedies and observes that criminal proceedings were still pending against him. It explains that "Panama's legal system provides effective remedies under its criminal law against [for example] the committal decision taken pursuant to articles 2426 to 2428 of the Panamanian Code of Criminal Procedure. The applicant faces a number of criminal charges in connection with which no judgement has yet been given; the normal procedure is being followed. He may, however, appeal to a higher court against the committal decision, in addition to resorting to all the remedies specified under criminal law".

4.2 As to the facts of the case, the State party notes that on 16 September 1985, the author was sentenced to three years' and seven months' imprisonment for 11 counts of cheque fraud. [a] Had he served the full term, he would have been released on 8 January 1988. He was, however, released on parole by Executive Decision of 24 November 1986, signed jointly by the President of Panama and the Minister of the Interior and Justice; he was free after that date, until he was rearrested for further offences. [b]

4.3 Concerning the further judicial proceedings against Mr. Wolf, the State party explains that on 15 September 1988 the Juzgado Primero of San Miguelito found the author guilty of signing an uncovered cheque to the order of a supermarket, and sentenced him to two years' and 10 months' imprisonment and an additional 87-day fine at the rate of 2.5 balboas a day. At the same time, the Juzgado Octavo continued to investigate one further charge of fraud against the Compañía Xerox de Panamá, and another one of forgery to the detriment of Apartotel Tower House Suites. Mr. Wolf was sentenced to three years' imprisonment on the first charge; he appealed, and the case was transferred to the Second High Court of Justice (Segundo Tribunal Superior de Justicia), which ordered the Juzgado Quinto to join the indictments and pronounce a single sentence. In the second case, oral proceedings had been scheduled but could not proceed, because the accused had left Panamanian territory.

4.4 The State party affirms that the author's claims are without any foundation (reclamación carente de todo fundamento), that the judicial proceedings against Mr. Wolf were conducted in full respect of the requirements laid down under Panamanian law, and that the author was not only represented, but that his representatives used the legal recourses available to them, in the best interest of their client. The State party adds that if some of the judicial decisions could not be notified to the author, this was probably because he had left the national territory. The State party does not, however, provide further details about the course of the judicial proceedings, nor about the author's legal representation or the identity of his representatives.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 At its thirty-sixth session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, the Committee noted the State party's contention that the author had failed to avail himself of effective remedies but observed that it had not, at that point in time, denied that the author had no access to legal counsel, nor indicated how he could have resorted to further local remedies in the absence of such assistance. In the circumstances, the Committee concluded that the requirements of article 5, paragraph 2 (b), of the Optional Protocol had been met.

5.3 On 27 July 1989, the Committee declared the communication admissible and asked the State party to forward copies of the indictments against the author and of any relevant court orders and decisions. None were received.

5.4 The Committee has noted the State party's submission of 6 December 1989, made after the decision on admissibility, in which it again argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, and that the author had had legal representation. The Committee takes the opportunity to expand on its admissibility findings.

5.5 The State party submits, in general terms, that judicial proceedings against the author remain pending, and that the latter was assigned legal counsel. It is implicit in rule 91 of the Committee's rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant should make available to the Committee all the information at its disposal; this includes, at the stage of the determination of the admissibility of a communication, the provision of sufficiently detailed information about remedies pursued by, as well as remedies still available, to the author. The State party has not forwarded such information. It has confined itself to the observation that the author's representatives availed themselves of the legal remedies open to the author, in his best interest. Thus, there is no reason to revise the Committee's decision on admissibility.

6.1 Concerning the substance of Mr. Wolf's allegations, the Committee notes that the State party has confined itself to statements of a general nature, by categorically dismissing the author's claims as baseless and asserting that the judicial procedures in the case complied with the requirements of Panamanian law. Consistent with the considerations detailed in paragraph 5.5 above, article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to furnish the Committee with sufficient detail about the measures, if any, taken to remedy the situation. The summary dismissal of the allegations, as in the present case, does not meet the requirements of article 4, paragraph 2. At the same time, the Committee notes that it is incumbent upon the author of a complaint to substantiate his allegations properly.

6.2 While the author has not specifically invoked article 9 of the Covenant, the Committee considers that some of his claims raise issues under this provision. Although he has claimed that he should have been granted a "grace period" of 48 hours to settle his debts before he could be arrested, the Committee lacks sufficient information to the effect that his arrest and detention were arbitrary and not based on grounds established by law. On the other hand, the author has claimed and the State party has not denied that he was never brought before a judge after his arrest, and that he never spoke with any lawyer, whether counsel of his own choice or public defender, during his detention. In the circumstances, the Committee concludes that article 9, paragraph 3, was violated because the author was not brought promptly before a judge or other judicial officer authorized by law to exercise judicial power.

6.3 The author has complained that he had no access to counsel. The State party explains, however, that he had legal representation, without clarifying whether such representation was provided by State-appointed counsel, nor contesting the author's allegation that he never actually saw a lawyer. In the circumstances, the Committee concludes that the requirement laid down in article 14, paragraph 3 (b), that an accused person have adequate time and facilities to communicate with counsel of his own choosing has been violated.

6.4 With respect to the author's right, under article 14, paragraph 3 (c), to be tried without unreasonable delay, the Committee cannot conclude that the proceedings before the Juzgado Octavo of Panama suffered from undue delays. Similarly, in respect of the proceedings before the Juzgado Primero of San Miguelito, it observes that investigations into allegations of fraud may be complex and that the author has not shown that the facts did not necessitate prolonged proceedings.

6.5 The author claims that the State party has violated his right to be tried in his presence, protected by article 14, paragraph 3 (d). The Committee notes that the State party has denied this allegation but failed to adduce any evidence to the contrary, such as a copy of the trial transcript, and finds that this provision has been violated.

6.6 The author claims that he was denied a fair trial; the State party has denied this allegation by generally affirming that the proceedings against Mr. Wolf complied with domestic procedural guarantees. It has not, however, contested the allegation that the author was not heard in any of the cases pending against him, nor that he was never served a properly motivated indictment. The Committee recalls that the concept of a "fair trial" within the meaning of article 14, paragraph 1, must be interpreted as requiring a number of conditions, such as equality of arms and respect for the principle of adversary proceedings. c/ These requirements are not respected where, as in the present case, the accused is denied the opportunity personally to attend the proceedings, or where he is unable properly to instruct his legal representative. In particular, the principle of equality of arms is not respected where the accused is not served a properly motivated indictment. In the circumstances of the case, the Committee concludes that the author's right under article 14, paragraph 1, was not respected.

6.7 The Committee finally notes that the State party has not addressed the author's claim of ill-treatment during his detention. In the Committee's opinion, the physical ill-treatment to which the author was subjected and the denial of food for five days, while not amounting to a violation of article 7 of the Covenant, did violate the author's right, under article 10, paragraph 1, to be treated with respect for the inherent dignity of his person.

6.8 Finally, the Committee notes that the author was detained for a period of over a year at the penitentiary of Coiba, which according to the author's uncontested claim is a prison for convicted offenders, while he was unconvicted and awaiting trial. This, in the Committee's opinion, amounts to a violation of the author's right, under article 10, paragraph 2, to be segregated from convicted persons and to be subjected to separate treatment appropriate to his status as an unconvicted person. On the other hand, while the author has claimed to have been subjected to forced labour while awaiting his sentence, the Committee considers that this allegation has not been sufficiently substantiated as to raise issues under article 8, paragraph 3 (a), of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 9, paragraph 3, 10, paragraphs 1 and 2, and 14, paragraphs 1 and 3 (b) and (d), of the Covenant.

8. The Committee is of the view that Mr. Dieter Wolf is entitled to a remedy. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. The Committee would appreciate receiving information, within 90 days, from the State party in respect of measures adopted pursuant to the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ The author claims to have been convicted on nine counts and acquitted on two (para. 2.3).

b/ According to the author, however, he was released on bail in the spring of 1986 and rearrested in August 1986 (paras. 2.6 and 2.7). In his comments of 8 February 1989, the author claims not to know anything about the purported presidential pardon of November 1986, a time subsequent to his second arrest.

c/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex 10, sect. E, communication No. 207/1986 (Morael v. France), views adopted on 28 July 1989, para. 9.3.

L. Communication No. 293/1988, Horace Hibbert v. Jamaica (views adopted on 27 July 1992, at the forty-fifth session)

Submitted by:	Horace Hibbert (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	24 January 1988
Date of decision on admissibility:	19 October 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 1992,

Having concluded its consideration of communication No. 293/1988, submitted to the Human Rights Committee by Mr. Horace Hibbert under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is Horace Hibbert, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was a corporal in the police force of Jamaica and formerly assigned to the Morant Bay Constabulary Station in the parish of Saint James. In the late evening of 11 June 1984, he was assigned to special duty in the district of Prospect with three other officers from the Morant Bay Station, to search for a notorious local criminal who was wanted on a charge of burglary and larceny. He states that it was in performance of his duties that, on the night in question, he shot two individuals, Maureen Robinson and Leroy Sutton, who had been approaching the police vehicle around which the police officers were gathering. Ms. Robinson died instantly, whereas Mr. Sutton was paralysed by a bullet fired from the author's 0.38 calibre service weapon; he died in December 1985. The police investigation established that the other police officers and a third person, who had been interrogated by them, had seen Ms. Robinson and Mr. Sutton, that one of the officers told them to return to their homes on account of the advanced hour and that they had been sitting next to the police car for five minutes. The author, however, claims that he saw them for the first time when their bodies were placed in the trunk of the car.

2.2 The author submits that just before discharging the fatal shots, he had himself been fired at from the direction where the deceased had been standing or walking; he therefore argues that he acted in self-defence. The prosecution, however, contended that the two were shot from behind, from a short distance, estimated at around seven yards. After an investigation that lasted three days, the author was arrested and charged with murder; he submits that he was charged on the basis of false witness testimony. A preliminary investigation was conducted at Morant Bay in March 1985; in its course, Leroy Sutton was cross-examined by the author's counsel. In October 1985, Mr. Sutton signed a written deposition incriminating the author in the presence of the examining miagistrate. This deposition was later tendered as evidence and admitted by the trial judge.

2.3 The author was tried in the Home Circuit Court, Kingston, from 18 to 20 May 1987; during the trial, he was represented by two legal aid attorneys, H.E., Q.C. and N.E., Q.C. The author entered a plea of not guilty but was found guilty as charged and sentenced to death. The jury took a mere 11 minutes to return a unanimous verdict. The Court of Appeal of Jamaica dismissed his appeal on 25 January 1988; the appeal centred on the issue of the admissibility as evidence of a written deposition made by a witness who died before the start of the trial. A subsequent petition for special leave to appeal to the Judical Committee of the Privy Council was dismissed on 24 July 1989.

2.4 Counsel submits that his client has exhausted available domestic remedies, and that a constitutional motion in the Supreme (Constitutional) Court does not constitute an available and effective remedy.

2.5 Counsel further contends that the State party does not make legal aid available for the purpose of constitutional motions. Even if the author had a theoretical constitutional remedy, it would not be available to him because of the absence of legal aid.

Complaint

3.1 The author contends that his trial was moved from St. Thomas to Kingston, after threats against and intimidation of his representatives. This allegedly caused a considerable delay in the adjudication of his case.

3.2 In respect of the circumstances of his trial, the author claims that the jurors were intimidated by the police. Inhabitants of the district of St. Thomas allegedly came to the Home Circuit Court in Kingston and identified the author in the presence of the jurors, who were about to be empanelled, with the following words: "See the PNP police boy from St. Thomas who shoot the boy and the girl - him for hung." The author's lawyer was informed about this but did not take action; further, he is said to have acted negligently since he failed to refute false evidence produced against Mr. Hibbert and did not attempt to tender as evidence the police station diary, an important piece of evidence in the author's opinion. The author further claims that the judge pressured the prosecution witnesses and intimated both the jurors and his lawyers.

3.3 According to the author, his former colleagues in the police force were threatened and informed that they would lose their jobs and be transferred away from their families, or even charged jointly with the author, if they did not testify in support of the case made by the prosecution.

3.4 The author further claims that he did not have adequate opportunities to consult with his lawyers, since they never visited him during pre-trial detention and his letters addressed to them remained unanswered; his wife visited their offices on several occasions, but all she obtained was a promise that they would contact him. He adds that he informed one of his lawyers about what he considered to have been unfair in the conduct of the trial and the preliminary inquiry, and notes that the lawyer promised to inform his colleague(s), but failed to do so. One of his representatives cross-examined prosecution witnesses during the trial; the author alleges, however, that the trial judge ruled many of the questions posed by the lawyer inadmissible or sustained the prosecution's objections to some of them. Only one witness sought to testify on his behalf; according to the author, this witness had been heard as a prosecution witness during the preliminary inquiry, when his testimony had been rejected.

3.5 Finally, the author submits that the investigating officer, an activist for the Jamaican Labour Party (JLP) who was not called as a witness during the trial, received a bribe from the Member of Parliament for St. Thomas to continue the investigation. The author surmises that the officer did not attend court because he did not want to be seen by the other witnesses, who had also been promised a share of the bribe, which he had not passed on. In the same context, the author contends that the case against him was widely publicized by the Member of Parliament, the Police Commissioner and other individuals, with the resulting prejudicial impact on the potential members of the jury.

State party's information and observations

4.1 By submission of 17 November 1988, the State party submitted that the communication was inadmissible on the ground of non-exhaustion of domestic remedies, because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. By further submission of 8 May and 26 September 1990, made after the adoption of the Committee's decision on admissibility, the State party contended that the communication remained inadmissible since the author had not availed himself of constitutional remedies, pursuant to section 25 of the Jamaican Constitution. Any decision of the Supreme (Constitutional) Court could be appealed to the Court of Appeal of Jamaica and from there to the Judicial Committee of the Privy Council.

4.2 The State party argues that many of the facts presented by the author, in particular in so far as they relate to legal representation and counsel's failure to cross-examine witnesses, do not point to any responsibility of the State party's judicial authorities. Additionally, and with reference to recent decisions of the Human Rights Committee, the State party observes that the facts as presented merely seek to raise issues of evaluation of evidence in the case, which the Committee is not competent to examine. a/

4.3 The State party further points to section 24, paragraph 2, of the Constitution, which provides that no person shall be treated in a discriminatory manner by any person acting in accordance with any written law or in performance of the function of any public office or any public authority. Subsection 3 defines as "discriminatory" the different treatment of persons based wholly or mainly on their respective attributes, e.g., political opinions. The State party submits that Mr. Hibbert may seek redress for the alleged discrimination on the ground of his political affiliation by way of an application under section 25 of the Constitution. In that respect, therefore, it deems the communication inadmissible on the ground of non-exhaustion of domestic remedies.

4.4 As to the author's complaint about undue delays in the proceedings against him, the State party notes, in a submission dated 30 October 1991, that such delays as occurred were attributable to an application for a change of venue, filed by the author's lawyer and based on the latter's perceptions of threats and intimidation. The decision to change the venue does not, in the State party's opinion, reveal a violation of any provision of the Covenant.

4.5 With respect to the claims detailed in paragraphs 3.2 to 3.4 above, the State party observes that they pertain to an alleged breach of the right to a fair trial, and that these claims have not been subject to judicial determination under section 25 of the Constitution.

4.6 Finally, the State party rejects as "totally unsubstantiated" the allegation that the investigating officer received bribes from a Member of Parliament.

Admissibility decision and review thereof

5.1 During its thirty-seventh session, the Committee considered the admissibility of the communication. As to the requirement of exhaustion of domestic remedies, it considered that with the dismissal of the author's petition for leave to appeal by the Judicial Committee of the Privy Council on 24 July 1989, there were no further effective remedies for the author to exhaust.

5.2 On 19 October 1989, the Committee declared the communication admissible in so far as it appeared to raise issues under article 14 of the Covenant.

6.1 The Committee has taken due note of the State party's contention, made after the decision on admissibility, that in respect of the author's claim of a violation of article 14 and in respect of alleged discrimination based on political opinion, domestic remedies have not been exhausted.

6.2 The Committee reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee recalls that in a different case b/ the State party indicated that legal aid is not provided for constitutional motions. Therefore, the Committee considers that, in the circumstances of the case, a constitutional motion does not constitute a remedy that is both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Accordingly, there is no reason to revise the Committee's decision on admissibility of 19 October 1989.

Examination of the merits

7.1 With respect to the alleged violation of article 14, three principal issues are before the Committee: (a) whether the alleged intimidation of the jurors by the judge and his objections to several of the questions posed by author's counsel amounted to a denial of a fair trial; (b) whether alleged references to the author's political affiliation and alleged irregularities in the conduct of the police investigation violated the principle of "equality before the court"; and (c) whether the author had adequate time and facilities for the preparation of his defence and was able to have witnesses called on his behalf.

7.2 Concerning the first issue under article 14, the Committee reaffirms that it is generally for the appellate courts of State parties to the Covenant to evaluate the facts and evidence in a particular case. It is not in principle for the Committee to assess the conduct of the trial by the trial judge or to review his instructions to the jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The Committee lacks evidence that the conduct of the trial by the judge or his instructions to the jury suffered from such defects. In particular, after considering the material before it, including the trial transcript, the Committee has no evidence that by objecting to several of counsel's questions during cross-examination, or by sustaining the prosecution's objections to some of these questions, the judge violated his obligation of impartiality. Nor is there any evidence that the judge's questions "intimidated" any of the witnesses. The Committee, in these circumstances, finds no violation of article 14, paragraph 1, of the Covenant.

7.3 The Committee takes the opportunity, at this stage of entering the merits of the case, to reconsider issues of admissibility, in accordance with rule 93 (4) of its rules of procedure. In respect of the author's claim that his political affiliations were used against him in court, the Committee observes that after careful review of the material before it, evidence in substantiation of this claim for purposes of admissibility cannot be discerned. This also applies to the claim that the investigating officer received a bribe from a Member of Parliament for the district where the murder had occurred. The Committee notes, moreover, that the latter allegation was introduced by author's counsel subsequent to the Committee's decision on admissibility of 19 October 1989, that the issue of alleged discrimination on the basis of political opinion was not placed before the domestic courts and that domestic remedies in this respect have not been exhausted. Accordingly, this part of the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol.

7.4 As to Mr. Hibbert's claim relating to article 14, paragraph 3 (b) and (e), of the Covenant, the Committee notes that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. The determination of what constitutes "adequate time" depends on an assessment of the particular circumstances of each case. The Committee notes that the author benefited from senior counsel, who chose not to request a delay for further preparation of the defence. The Committee is not in a position to ascertain whether the alleged failure of the representatives either to introduce the police station diary as evidence or to call other witnesses on the author's behalf was a matter of professional judgement or of negligence. Accordingly, the material before the Committee does not justify a finding of a violation of article 14, paragraph 3 (b) and (e).

8. The Human Rights Committee, acting under article 65, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose violations of any provisions of the Covenant.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. S, G.S. v. Jamaica, decision of 8 November 1989, para. 3.2.

[b] A. Little v. Jamaica. See sect. J above, communication No. 283/1988, views adopted on 1 November 1991, paras. 7.3 and 7.4.

M. Communication No. 319/1988, Edgar A. Cañón García v. Ecuador (views adopted on 5 November 1991, at the forty-third session)

Submitted by:	Edgar A. Cañón García
Alleged victim:	The author
State party:	Ecuador
Date of communication:	4 July 1988
Date of the decision on admissibility:	18 October 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 5 November 1991,

Having considered communication No. 319/1988, submitted to the Committee by Edgar A. Cañón García under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication (initial submission dated 4 July 1988 and subsequent correspondence) is Edgar A. Cañón García, a Colombian citizen currently imprisoned on a drug-trafficking conviction at the penitentiary in Anthony (Texas/New Mexico), United States of America. He is represented by counsel.

2.1 The author lived in the United States of America for 13 years until 1982, when he returned to Bogotá, Colombia, where he resided until July 1987. On 22 July 1987, he travelled to Guayaquil, Ecuador, with his wife. At around 5 p.m. the same day, while walking with his wife in the reception area of the Oro Verde Hotel, they were surrounded by 10 armed men, reportedly Ecuadorian police officers acting on behalf of INTERPOL and the United States Drug Enforcement Agency, who forced them into a vehicle waiting in front of the hotel. He adds that he asked an Ecuadorian police colonel whether the Ecuadorian police (Policía Nacional Ecuatoriana) had any information about him; he was told that the police merely executed an "order" coming from the Embassy of the United States. After a trip of approximately one hour, they arrived at what appeared to be a private residence, where Mr. Cañón was separated from his wife.

2.2 He claims to have been subjected to ill-treatment, which included the rubbing of salt water into his nasal passages. He spent the night handcuffed to a table and a chair, without being given as much as a glass of water. At approximately 8 a.m. the next morning, he was taken to the airport of Guayaquil, where two individuals who had participated in his "abduction" the previous day identified themselves as agents of the Drug Enforcement Agency and informed him that he would be flown to the United States on the basis of an arrest warrant issued against him in 1982.

2.3 In this context, the author notes that agents of the Drug Enforcement Agency had offered him, in the course of a covert operation in 1982, to carry out a drug-trafficking operation, which he had declined. He submits that he never committed a drug-related offence, and argues that the United States authorities decided not to follow the formal extradition procedures under the United States-Ecuador Extradition Treaty, since the possibility of obtaining an extradition order by an Ecuadorian judge would have been remote.

2.4 After it had been ascertained that Mr. Cañón spoke and understood English, the so-called "Miranda rights" (after a landmark decision of the United States Supreme Court requiring criminal suspects to be informed of their right to remain silent, to obtain the assistance of a lawyer during interrogation, and that statements made by them may be used against them in court) were read out to him, and he was informed that he was detained by order of the United States Government. The author asked for permission to consult with a lawyer or to speak with the Colombian Consul at Guayaquil, but his request allegedly was turned down; instead, he was immediately made to board a plane bound for the United States.

2.5 As to the requirement of exhaustion of domestic remedies, the author indicates that he was unable to bring his case before an Ecuadorian judge so as to be able to determine the legality of his expulsion from the country. He further indicates that any recourse to the Ecuadorian courts in his current situation would not be effective; in this context, he notes that he does not have the financial means to seize the Ecuadorian courts, nor the benefit of legal assistance in Ecuador, which would enable him to start civil action and/or to seek criminal prosecution of those responsible for his alleged ill-treatment.

Complaint

3. The author submits that the facts described above constitute a violation of articles 2; 5, paragraph 2; 7; 9, paragraph 1; 13; and 17 of the International Covenant on Civil and Political Rights. In particular, he contends that, in the light of the existence of a valid extradition treaty between the State party and the United States at the time of his apprehension, he should have been afforded the procedural safeguards provided for in said treaty.

State party's information and observations

4.1 The State party did not make any submission prior to the adoption of the Committee's decision declaring the communication admissible. On 11 July 1991, it informed the Committee as follows:

> "The act in question occurred on 22 July 1987, before the present administration took office. Furthermore, the citizen in question has not submitted any kind of application or recourse to the competent national authorities.

"Notwithstanding the foregoing, since it is the basic policy of the Ecuadorian Government to monitor the application of and respect for human rights, especially by the law enforcement authorities, a thorough and meticulous investigation of the act has been conducted which has led to the conclusion that there were indeed administrative and procedural irregularities in the expulsion of the Colombian citizen, a fact which the Government deplores and has undertaken to investigate in order to punish the persons responsible for this situation and to prevent the recurrence of similar cases in the country.

"Moreover, it should be pointed out that, in compliance with clear legal provisions emanating from international agreements and national legislation, Ecuador is conducting a sustained and resolute struggle against drug trafficking which, on this occasion, regrettably caused police officers to act with a degree of severity that went beyond their instructions and responsibilities. In any event, acts such as this are certainly not consistent with the Government's policies and actions which are in fact directed towards assuring respect and observance of the human rights and fundamental freedoms of the individual, whether he is a national or a foreigner, while at the same time, ensuring public order and, in this specific case, meeting the Government's concern to maintain such an especially valuable asset as social peace and its obligation to combat drug trafficking with every legal means available to it in order to avoid situations which would be regrettable and which are occurring in a number of countries in the region and adjoining Ecuador.

"The Government will communicate the relevant information on the measures taken to punish the persons responsible for this act."

4.2 The Committee welcomes the frank cooperation of the State party.

Issues and proceedings before the Committee

5.1 On 18 October 1990, the Committee declared the communication admissible inasmuch as it appeared to raise issues under articles 7, 9 and 13, in conjunction with article 2, of the Covenant. With respect to the requirement of exhaustion of domestic remedies, the Committee found that, on the basis of the information before it, there were no domestic remedies that the author could have pursued. The Committee further observed that several of the author's allegations appeared to be directed against the authorities of the United States, and deemed the relevant parts of the communication inadmissible, since the United States had not ratified, or acceded to, the Covenant or the Optional Protocol. Inasmuch as the author's claim under article 17 of the Covenant was concerned, the Committee found that Mr. Cañón García had failed to substantiate sufficiently, for purposes of admissibility, his allegation.

5.2 As to the merits, the Human Rights Committee notes that the State party does not seek to refute the author's allegations, in so far as they relate to articles 7, 9 and 13 of the Covenant, and that it concedes that the author's removal from Ecuadorian jurisdiction suffered from irregularities.

6.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it reveal violations of articles 7, 9 and 13 of the Covenant.

6.2 In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take measures to remedy the violations suffered by Mr. Cañón García. In this connection, the Committee has taken note of the State party's assurance that it is investigating the author's claims and the circumstances leading to his expulsion from Ecuador, with a view to prosecuting those held responsible for the violations of his rights.

7. The Committee would appreciate receiving from the State party, within ninety days of the transmittal to it of this decision, all pertinent information on the results of all its investigations, as well as on measures taken to remedy the situation, and in order to prevent the repetition of such events in the future.

[Done in English, French, Russian and Spanish, the English text being the original version.]

N. Communication No. 336/1988, Nicole Fillastre v. Bolivia (views adopted on 5 November 1991, at the forty-third session)

Submitted by: Nicole Fillastre (victim's wife)

Alleged victims: André Fillastre and Pierre Bizouarn

State party: Bolivia

Date of communication: 27 September 1988 (date of initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Having considered communication No. 336/1988, submitted to the Committee for consideration under the Optional Protocol to the Covenant by Mrs. Nicole Fillastre on behalf of her husband, Mr. André Fillastre, and on behalf of Mr. Pierre Bizouarn,

Meeting on 5 November 1991,

Adopts the following views under article 5, paragraph 4, of the Optional Protocol.

Facts as presented by the author

1. The author of the communication (initial submission dated 27 September 1988 and subsequent correspondence) is Nicole Fillastre, a French citizen residing in Le Havre, France. She submits the communication on behalf of her husband, André Fillastre, a French citizen and private detective by profession, currently detained at the prison of San Pedro in La Paz, Bolivia, together with another private detective, Pierre Bizouarn. By letter dated 25 May 1989, Mr. Bizouarn authorized Mrs. Fillastre to act on his behalf.

2.1 The author states that on 26 August 1987, André Fillastre and Pierre Bizouarn travelled to La Paz accompanied by Ms. Silke Zimmerman, a German citizen then residing in France. André Fillastre was travelling in his capacity as a private detective on behalf of Ms. Zimmerman, who had requested his services in order to find and repatriate her four-year-old son, Raphael Cuiza Zimmerman, living in Bolivia. Her son had allegedly been taken away from his mother by his Bolivian father, Jorge Cuiza, and flown to Bolivia.

2.2 On 3 September 1987, André Fillastre, Mr. Bizouarn and Ms. Zimmerman were arrested by the Bolivian police, after a complaint had been filed by the child's father, who claimed that they had manipulated their way into his home and started a brawl in which he was injured. The two detectives allegedly had abducted the child and left the home, together with the mother. Criminal proceedings were instituted against them. On 12 September 1987, the examining magistrate indicted the accused on three grounds: (a) kidnapping of a minor (*secuestro y rapto propio*), punishable under article 313 of the Bolivian Penal Code; (b) unauthorized entry into a home (*allanamiento de domicilio o sus dependencias*; article 298 of the Bolivian Penal Code), and (c) causing grievous bodily harm (*lesiones graves y leves*; article 271 of the Bolivian

Penal Code). Allegedly, he did so without having interrogated the accused. Nevertheless, Ms. Zimmerman was released a few days later, apparently without plausible explanations. Messrs. Fillastre and Bizouarn, however, were placed under detention and imprisoned at the prison of San Pedro in La Paz, where they continue to be held.

2.3 With regard to the requirement of exhaustion of domestic remedies, the author states that the judicial proceedings against her husband and Mr. Bizouarn have been pending before the court of first instance since 12 September 1987. In this context, she indicates that, on 12 June 1990, the judge was expected to render his decision in the case but that, since the legal aid attorney assigned to her husband did not appear in court, he decided to further postpone the hearing.

Complaint

3.1 It is submitted that Mr. Fillastre and Mr. Bizouarn were not able to communicate adequately either with their lawyer or with the examining magistrate, before whom they were brought on 3 September 1988, one year after their arrest. In particular, it is alleged that the interpreter who had been designated to assist them could only speak English, a language they did not master. Further, they allege that their statements before the examining magistrate were not only recorded incorrectly but deliberately altered.

3.2 It is submitted that Mr. Fillastre and Mr. Bizouarn were held in custody for 10 days without being informed of the charges against them; this was reportedly confirmed by the arresting officer, upon interrogation by the examining magistrate. As to the circumstances of the investigatory phase of the judicial proceedings, the author claims that several irregularities occurred in their course. Furthermore, the court hearings allegedly were postponed repeatedly because either the legal aid attorney or the prosecutor failed to appear in court. More generally, the author claims bias on the part of the judge and of the judicial authorities. This is said to be evidenced by the fact that the Bolivian authorities allowed Ms. Zimmerman to leave Bolivia without any plausible justification and never sought her testimony before the examining magistrate, although she had been indicted together with Mr. Fillastre and Mr. Bizouarn.

3.3 As to the conditions of detention at the prison of San Pedro, they are said to be inhuman and degrading. In this context, the author subnmits that, on account of the psychological stress as well as the poor conditions of detention, her husband has become addicted to alcohol and drugs and lost his will to live.

3.4 Finally, the author claims that her countless efforts, since mid-September 1987, to obtain her husband's release, have not met with any response. She maintains that, notwithstanding the various promises made to her by the French authorities, no official attempt was made to obtain her husband's release, nor to improve the conditions of his detention.

State party's information and observations

4.1 The State party provides a chronology of the judicial proceedings in the case and indicates that a judgement at first instance may be expected by mid-August 1991. It notes that the preliminary investigations were initiated on 14 September 1987, with the consent of the examining magistrate (Juez Instructor en lo Penal); they were concluded by decision of 29 December 1988 (auto final), which committed Mr. Fillastre and Mr. Bizouarn to stand trial for the offences referred to in paragraph 2.2 above. This decision was challenged by the alleged victims on 16 and 22 February 1989, respectively.

4.2 The proceedings were then transferred to the Magistrates Court (Juez Quinto de Partido en lo Penal). The State party indicates that the process of evidence gathering, reconstruction of the facts and hearing of witnesses has been protracted, but that it is approaching its final stage. Such delays as occurred are said to be partly attributable to the judge's desire to gather further evidence, which would enable him to render his judgement.

4.3 The State party points out that Mr. Fillastre and Mr. Bizouarn are likely to be found guilty of the offences for which they were indicted, in particular the kidnapping of a minor (article 313 of the Penal Code); this offence is punishable by imprisonment of one to five years. In the event of their conviction, they would retain the right to appeal conviction and sentence (recurso de apelación), pursuant to articles 284 and 288 of the Bolivian Code of Criminal Procedure. In the event of an unsuccessful appeal, they would be able to subsequently request the cassation of the judgement of the Court of Appeals (recurso de nulidad), pursuant to article 296 of the Code of Criminal Procedure.

4.4 In respect of the author's claim of a violation of articles 14, paragraph 3 (b) and (d), the State party contends that both Mr. Fillastre and Mr. Bizouarn have received legal assistance throughout the proceedings, not only from the French consulate in La Paz, but also from one privately and one court-appointed lawyer. The alleged victims have consistently assisted the court sessions, together with their representatives.

4.5 The State party further contends that since the authors were properly indicted and the judicial proceedings continue to take their normal course, the accused remain lawfully detained at the Prison of San Pedro in La Paz. The State party does not, however, indicate whether the accused were promptly informed of the charges against them, and whether they were brought promptly before a judge or other officer authorized by law to exercise judicial power.

4.6 As to the author's complaint about undue delays in the judicial proceedings, the State party points out that criminal investigations under Bolivian law are carried out in written form, which implies that administrative and other delays may occur. Furthermore, the absence of an adequate budget for a proper administration of justice means that a number of criminal cases and certain specific procedural phases of criminal proceedings have experienced delays.

4.7 The State party indicates that it has established a special commission of investigation to inquire into the author's allegation of ill-treatment and inhuman and degrading prison conditions. The report of this commission, whose findings are said to be confirmed by Mr. Bizouarn and Mr. Fillastre, concludes that both prisoners are in good health and receive basic but adequte medical attention; that they are detained in the most comfortable sector of the San Pedro prison; that their diet is satisfactory; that they benefit from recreational facilities; and that they may communicate freely with friends, their relatives and their legal representatives.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 During its fortieth session, the Committee considered the admissibility of the communication. It took note of the State party's observations and clarifications concerning the current status of the case before the Bolivian courts, observing that the victims were still awaiting the outcome of the proceedings instituted against them in September 1987, that is, more than three years after their arrest. In the circumstances, the Committee considered that a delay of over three years for the adjudication of the case at first instance, discounting the availability of subsequent appeals, was "unreasonably prolonged" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. From the available information, the Committee deduced that such delays as had been encountered were neither attributable to the alleged victims nor explained by the complexity of the case. It therefore concluded that the requirements of article 5, paragraph 2 (b), had been met.

5.3 The Committee considered that the communication should be examined on the merits as it appeared to raise issues under the Covenant in respect of the author's claims (a) that Mr. Fillastre and Mr. Bizouarn were not promptly informed of the charges against them; (b) that they were not promptly brought before a judge and interrogated; (c) that they were not afforded adequate facilities for the preparation of their defence and were unable to properly communicate with counsel assigned to them; (d) that they were inadequately represented during the preliminary investigation: and (e) that they were being subjected to inhuman and degrading treatment.

5.4 On 6 November 1990, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 9, paragraphs 2 and 3; 10, paragraph 1; and 14, paragraph 3 (b), (c) and (d), of the Covenant.

6.1 The Committee has considered the present communication in the light of all the information provided by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

6.2 With respect to the allegation of a violation of article 10 of the Covenant, the Committee observes that the author has not corroborated, in a manner sufficiently substantiated, her claim that the prison conditions at the penitentiary of San Pedro are inhuman and do not respect the inherent dignity of the human person. The State party has endeavoured to investigate this claim, and the findings of its commission of inquiry, which have not been refuted either by the authors or by the alleged victims, conclude that Mr. Fillastre and Mr. Bizouarn benefit from basic amenities during detention, including medical treatment, adequate diet, recreational facilities as well as contacts with their relatives and representatives. In the circumstances, the Committee concludes that there has been no violation of article 10.

6.3 As to the alleged violation of article 14, paragraph 3 (b) and (d), the Committee reaffirms that it is imperative that accused individuals be afforded adequate time for the preparation of their defence, and that they be provided with free legal assistance if they cannot themselves afford the services of a legal representative. In the present case, it is uncontested that legal assistance was provided to both Mr. Fillastre and Mr. Bizouarn. Nor has the State party's claim that the alleged victims have benefited from such assistance throughout the proceedings, and that they have been able to attend hearings before the court together with their representatives, been refuted. In these circumstances, the Committee does not find that either article 14, paragraph 3 (b), or article 14, paragraph 3 (d), has been violated.

6.4 As to the alleged violation of article 9, paragraphs 2 and 3, the Committee observes that the author has stated in general terms that her husband and Mr. Bizouarn were held in custody for 10 days before being informed of the charges against them, and that they were not brought promptly before a judge or other officer authorized by law to exercise judicial power. It remains unclear from the State party's submission whether the accused were indeed brought before a judge or judicial officer between their arrest, on 3 September 1987, and 12 September 1987, the date of their indictment and placement under detention, pursuant to article 194 of the Bolivian Code of Criminal Procedure. The Committee cannot but note that there has been no specific reply to its request for information in this particular respect, and reiterates the principle that, if a State party contends that facts alleged by the author are incorrect or would not amount to a violation of the Covenant, it must so inform the Committee. The pertinent factor in this case is that both Mr. Fillastre and Mr Bizouarn allegedly were held in custody for 10 days before being brought before any judicial instance and without being informed of the charges against them. Accordingly, while not unsympathetic to the State party's claim that budgetary constraints may cause impediments to the proper administration of justice in Bolivia, the Committee concludes that the right of Mr. Fillastre and Mr. Bizouarn under article 9, paragraphs 2 and 3, have not been observed.

6.5 Under article 9, paragraph 3, anyone arrested or detained on a criminal charge "shall be entitled to trial within a reasonable time ...". What constitutes "reasonable time" is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice alluded to by the State party does not justify unreasonable delays in the adjudication of criminal cases. Nor does the fact that investigations into a criminal case are, in their essence, carried out by way of written proceedings, justify such delays. In the present case, the Committee has not been informed that a decision at first instance had been reached some four years after the victims' arrest. Considerations of evidence-gathering do not justify such prolonged detention. The Committee concludes that there has been, in this respect, a violation of article 9, paragraph 3.

6.6 The author has further alleged that her husband and Mr. Bizouarn have not been tried, at first instance, for a period of time that she considers unreasonably prolonged. Under article 14, paragraph 3 (c), the victims have the right to "be tried without undue delay". The arguments advanced by the State party in respect of article 9, paragraph 3, cannot serve to justify undue delays in the judicial proceedings. While the accused were indicted on several criminal charges under the Bolivian Criminal Code on 12 September 1987, the determination of these charges had not resulted in a judgement, at first instance, nearly four years later; the State party has not shown that the complexity of the case was such as to justify this delay. The Committee concludes that this delay violated the victim's rights under article 14, paragraph 3 (c).

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it reveal a violation of articles 9, paragraphs 2 and 3, and 14, paragraph 3 (c), of the Covenant.

8. In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by Messrs. André Fillastre and Pierre Bizouarn. The Committee has taken note of the State party's information that the offence for which the authors have been indicted under article 313 of the Bolivian Criminal Code is punishable by imprisonment of one to five years, and observes that the authors have already been detained for a period of four years and two months. In the circumstances, the State party should grant the authors a remedy in the form of their immediate release and ensure that similar violations do not occur in the future.

9. The Committee would wish to receive information, within 30 days, on any relevant measures adopted by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

O. Communication No. 349/1989, Clifton Wright v. Jamaica (views adopted on 27 July 1992, at the forty-fifth session)*

Submitted by:	Clifton Wright (represented by counsel)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	12 January 1989
Date of decision on admissibility:	17 October 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 1992,

Having concluded its consideration of communication No. 349/1989, submitted to the Human Rights Committee on behalf of Mr. Clifton Wright under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as presented by the author

1. The author of the communication dated 12 January 1989 is Clifton Wright, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of article 14, paragraphs 1 and 3 (b) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was convicted and sentenced to death on 29 March 1983, in the Home Circuit Court of Kingston, for the murder of Louis McDonald. The prosecution's case was that the deceased was last seen by his family in the afternoon of 28 August 1981. That evening, one Silvester Cole, a witness in the case, was trying to obtain a lift at a road junction in Kingston. The author and his codefendant, Winston Phillips, were similarly waiting for a lift at the same junction. All three were picked up by a yellow Ford Cortina motor car; Mr. Cole and Mr. Phillips stopped after approximately two miles and left the vehicle. In court, Mr. Cole testified that after they left the car, Mr. Phillips remained in the vicinity of the vehicle, looking up and down the road, while the author stayed in the car and held a gun to the driver's neck. Realizing that he was witnessing a hold-up, he first walked casually away from the scene, and only then began running. From a distance, he saw the car driving away with its lights turned off.

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* An individual opinion submitted by Mr. Bertil Wennergren is appended.

2.2 The author was arrested on 29 August 1981 at about 6 p.m., together with Winston Phillips. He had been seen driving Mr. McDonald's car by a friend of the latter; the car had been reported stolen on the same day. Both the author and Mr. Phillips were brought to the Waterford police station, where they were searched and found to be in possession of pieces of jewellery that the wife of the deceased later identified as belonging to her husband. The author submits that when they were arrested, the police could not possibly have known about the murder, since the deceased's body was recovered only in the afternoon of the next day, in a canefield close to where he had dropped off Messrs. Cole and Phillips.

2.3 No identification parade was held after the arrest of the accused on 29 August 1981, allegedly because a mob had sought to attack them at the police station when it became known that the deceased's jewellery had been found on them. The authors were moved to the Spanish Town police station thereafter, and Mr. Phillips was admitted to the hospital. No identification parade was conducted in Spanish Town, either, as the police officers conducting the investigation felt that because of the events at the Waterford police station, a parade would be unnecessary or even suspect.

2.4 A post-mortem was performed on 1 September 1981 at about 1 p.m. by Dr. Lawrence Richards. According to his evidence during the trial, which remained unchallenged, death had occurred an estimated 47 hours before, at around 2 p.m. on 30 August 1981, as a result of gunshot injuries inflicted no more than 10 to 20 minutes before death. Thus, it is submitted that death occurred only shortly before the body was recovered, and when the author had already been in custody for about 20 hours.

2.5 On 3 September 1981, Mr. Cole was taken to the Spanish Town police station, where the author was then in custody. The author was brought out of a cell and identified by Mr. Cole as the man who had held the gun and threatened the driver of the yellow Cortina. He was not asked to identify Mr. Phillips before the trial and indicated that he would have been unable to identify him; during the trial, he could not identify Mr. Phillips.

2.6 During the trial, the author made an unsworn statement from the dock. He asserted that he had borrowed the deceased's car from a friend, to give his girlfriend a ride to Spanish Town. He denied having obtained a lift in this car on 28 August 1981, and affirmed that he was unaware that it had been stolen. He further claimed that he had been working at the garage where he was employed as a battery repairman until about midnight on the day of the crime. Finally, he denied having been in possession of any of the deceased's jewellery.

2.7 The author was tried with Winston Phillips. At the conclusion of the trial, the jury failed to return a unanimous verdict in respect of Mr. Phillips, who was released on bail and ordered to be retried. The author was found guilty as charged, convicted and sentenced to death. He appealed to the Court of Appeal of Jamaica which, on 11 July 1986, dismissed his appeal. On 24 September 1986 the court issued a written judgement. On 8 October 1987, the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal.

2.8 On 13 February 1984, the author submitted a complaint to the

Inter-American Commission on Human Rights, claiming that he had been the victim of a miscarriage of justice. The Commission registered the case under No. 9260 and held a hearing on 24 March 1988. The State party argued that the author had not exhausted domestic remedies because he had failed to avail himself of constitutional remedies in Jamaica. The Commission requested further information as to whether such remedies were effective within the meaning of article 46 of the American Convention on Human Rights; the State party did not reply. On 14 September 1988, the Commission approved resolution No. 29/88, declaring "that since the conviction and sentence are undermined by the record in this case, and that the appeals process did not permit for a correction, that the Government of Jamaica has violated the petitioner's fundamental rights" under article 25 of the American Convention on Human Rights. The State party challenged this resolution by submission of 4 November 1988.

Complaint

3.1 Counsel contends that the State party violated several of the author's rights under the Covenant. First, he claims that the author was subjected to ill-treatment by the police, which allegedly included the squirting of a corrosive liquid (Ajax) into his eyes and that, as a result, he sustained injuries.

3.2 Counsel further claims that the author was not afforded a fair hearing within the meaning of article 14, paragraph 1, of the Covenant. More specifically, the trial transcript reveals that the pathologist's uncontested evidence, which had been produced by the prosecution, was overlooked by the defence and either overlooked or deliberately glossed over by the trial judge. This meant that the jury was not afforded an opportunity to properly evaluate this evidence which, if properly put, should have resulted in the author's acquittal. In fact, according to the pathologist's report, death occurred on 30 August 1981 at around 2 p.m., whereas Mr. Wright had been in police custody since approximately 6 p.m. on 29 August. It is submitted that no trial in which the significance of such crucial evidence was overlooked or ignored can be deemed to be fair, and that the author has suffered a grave and substantial denial of justice.

3.3 It is further alleged that throughout the trial, the judge displayed a hostile and unfair attitude towards the author as well as his representatives. Thus, the judge's observations are said to have been partial and frequently veined with malice, his directions on identification and on recent possession of stolen property biased. In this context, it is pointed out that no identification parade was held in the case and that the judge, in his summing up, endorsed the prosecution's contention that it was inappropriate to conduct an identification parade in the circumstances of the case. The judge also allegedly made highly prejudicial comments on the author's previous character and emphatically criticized the way in which the defence conducted the cross-examination of prosecution witnesses. Counsel maintains that the judge's disparaging manner *vis-à-vis* the defence, coupled with the fact that he refused a brief adjournment of 10 minutes and thereby deprived the defence of the opportunity of calling a potentially important witness, points to a violation of article 14, paragraph 3 (e), of the Covenant, in that the author was unable to obtain the examination of defence witnesses under the same conditions as witnesses against him.

3.4 Finally, the author alleges a violation of article 14, paragraph 3 (b), because he, or his representative, were denied adequate time for the preparation of the defence. In particular, it is submitted that the trial transcript reveals that the attorney assigned to the case was instructed on the very day on which the trial began. Accordingly, he had less than one day to prepare the case. This, according to counsel, is wholly insufficient to prepare adequately the defence in a capital case. Deficiencies in the author's defence are said to be attributable partly to lack of time for the preparation for the trial, and partly to the lack of experience of one of the author's two court-appointed lawyers.

3.5 With regard to the issue of domestic remedies, counsel rebuts the State party's contention that the communication is inadmissible on the ground of non-exhaustion of domestic remedies on grounds of a presumed right to apply for constitutional redress to the Supreme (Constitutional) Court. He adds that this argument is advanced without detailed consideration of the Constitution. He points out that chapter III of the Jamaican Constitution deals with individual rights, and section 20(5) deals with the right to a fair trial. In particular, section 25 makes provision for enforcement; section 25(2) stipulates that the Supreme Court has jurisdiction to "hear and determine applications", but adds the qualification that the Court shall not exercise its jurisdiction if it is satisfied that adequate means of redress have been available under any other law. The author's case is said to fall within the scope of the qualification of section 25(2) of the Jamaican Constitution: if it were not covered by this proviso, every convicted criminal in Jamaica alleging an unfair trial would have the right to pursue parallel or sequential remedies to the Court of Appeal and the Privy Council, both under criminal law and under the Constitution.

3.6 Counsel finally notes that the State party has failed to show that legal aid is available to the author for the purpose of constitutional motions. If the State party were correct in asserting that a constitutional remedy was indeed available, at least in theory, it would not be available to the author in practice because of his lack of financial means and the unavailability of legal aid. Counsel concludes that a remedy which cannot be pursued in practice is not an available remedy.

State party's information and observations

4. The State party contends that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. It argues that the author's rights under article 14 of the Covenant are coterminous with the fundamental rights guaranteed by section 20 of the Jamaican Constitution. Accordingly, under the Constitution, anyone who alleges that a fundamental right has been, is being or is likely to be infringed in relation to him may apply to the Supreme (Constitutional) Court for redress. Since the author failed to take any action to pursue his constitutional remedies in the Supreme Court, the communication is deemed inadmissible.

Committee's admissibility considerations and decision

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 During its fortieth session, in October 1990, the Committee considered the admissibility of the communication. With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that the case submitted by the author to the Inter-American Commission on Human Rights was no longer under examination by that body.

5.3 The Committee took note of the State party's contention that the communication was inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution. It observed that section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, while section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (sect. 25, para. 2, in fine). The Committee further noted that the State party had been requested to clarify, in several interlocutory decisions, whether the Supreme (Constitutional) Court had had an opportunity to determine the question whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of section 25, paragraph 2, of the Jamaican Constitution. The State party had replied that the Supreme Court had not had said opportunity. In the circumstances, the Committee found that recourse to the Constitutional Court under section 25 of the Jamaican Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.4 The Committee also noted that part of the author's allegations concerned claims of bias on the part of the judge, as well as the alleged inadequacy of the judge's instructions to the jury. The Committee reaffirmed that it is generally beyond its competence to evaluate the adequacy of the judge's instructions to the jury, unless it can be ascertained that these instructions were clearly arbitrary or amounted to a denial of justice, or unless it can be demonstrated that the judge manifestly violated his obligation of impartiality. In the case under consideration, the Committee considered that the circumstances which led to the author's conviction merited further examination in respect of his claims relating to article 14, paragraphs 1 and 3 (b) and (e), of the Covenant.

5.5 The Committee finally noted the author's allegation concerning ill-treatment by the police, and observed that the State party had remained silent on the issue whether this part of the communication should be deemed admissible.

5.6 On 17 October 1990, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 10 and 14, paragraphs 1 and 3 (b) and (e), of the Covenant.

State party's objections to the admissibility decision

6.1 The State party, in a submission dated 12 February 1991, challenges the Committee's findings on admissibility and objects to the reasoning described in paragraph 5.3 above. It argues, in particular, that the Committee's reasoning reflects a "grave misunderstanding" of the relevant Jamaican law, especially the operation of section 25, paragraphs 1 and 2, of the Jamaican Constitution. The right to apply for redress under section 25(1) is, in the terms of the provision itself, "without prejudice to any other action with respect to the same matter which is lawfully available". The only limitation is to be found in section 25(2) which, in the State party's opinion, does not apply in the case, since the alleged breach of the right to a fair trial was not at issue in the criminal law appeal to the Court of Appeal and the Judicial Committee:

> "... If the contravention alleged was not the subject of criminal law appeals, ex hypothesi, those appeals could hardly constitute an adequate remedy for that contravention. The decision of the Committee would render meaningless and nugatory the hard-earned constitutional rights of Jamaicans ..., by its failure to distinguish between the right to appeal against the verdict and sentence of the Court in a criminal case, and the 'brand new rights' to apply for constitutional redress granted in 1962".

6.2 The State party submits that the admissibility decision attaches undue significance to the fact that the Jamaican courts have not yet had occasion to rule on the application of the proviso to section 25(2) of the Constitution in circumstances where the appellant has already exhausted his criminal law appellate remedies. It notes that in the case of Noel Riley and others v. the Queen [A.G. (1982) 3 AER 469], Mr. Riley was able to apply, after the dismissal of his criminal appeal to the Court of Appeal and the Judicial Committee, to the Supreme (Constitutional) Court and thereafter to the Court of Appeal and the Privy Council, albeit unsuccessfully. In the State party's opinion, this precedent illustrates that recourse to criminal law appellate remedies does not render the proviso of section 25(2) applicable in situations where, following criminal law appeals, an individual files for constitutional redress.

6.3 As to the absence of legal aid for the filing of constitutional motions, the State party submits that nothing in the Optional Protocol or in customary international law supports the contention that an individual is relieved of the obligation to exhaust domestic remedies on the mere ground that there is no provision for legal aid and that his indigence has prevented him from resorting to an available remedy. It is submitted that the Covenant only imposes a duty to provide legal aid in respect of criminal offences (art. 14, para. 3 (d)). Moreover, international conventions dealing with economic, social and cultural rights do not impose an unqualified obligation on States to implement such rights: article 2 of the International Covenant on Economic, Social and Cultural Rights provides for the progressive realization of economic rights and relates to the "capacity of implementation of States". In the circumstances, the State party argues that it is incorrect to infer from the author's indigence and the absence of legal aid in respect of the right to apply for constitutional redress that the remedy is necessarily non-existent or unavailable.

6.4 As to the author's claim of ill-treatment by the police, the State party observes that this issue was not brought to its attention in the initial submission, and that the Committee should not have declared the communication admissible in respect of article 10 without previously having apprised the State party of this claim. It adds that, in any event, the communication is also inadmissible in this respect, as the author did not avail himself of the constitutional remedies available to him under sections 17(1) and 25(1) of the Jamaican Constitution: any person alleging torture or inhuman and degrading treatment or other punishment may apply to the Supreme Court for constitutional redress.

6.5 In the light of the above, the State party requests the Committee to review its decision on admissibility.

Post-admissibility considerations and examination of merits

7.1 The Committee has taken note of the State party's request, dated 12 February 1991, to review its decision on admissibility, as well as its criticism of the reasoning leading to the decision of 17 October 1990.

7.2 The same issues concerning admissibility have already been examined by the Committee in its views on communications Nos. 230/1987 a/ and 283/1988. b/ In the circumstances of those cases, the Committee concluded that a constitutional motion was not an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and that, accordingly, the Committee was not precluded from examining the merits.

7.3 The Committee has taken due note of the fact that subsequent to its decision on admissibility the Supreme (Constitutional) Court of Jamaica has had an opportunity to determine the question whether an appeal to the Court of Appeal of Jamaica and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of section 25, paragraph 2, of the Jamaican Constitution. The Supreme (Constitutional) Court has since replied to this question in the negative by accepting to consider the constitutional motion of Earl Pratt and Ivan Morgan (judgement entered on 14 June 1991). The Committee observes that whereas the issue is settled under Jamaican constitutional law, different considerations govern the application of article 5, paragraph 2 (b), of the Optional Protocol, such as the length of the judicial proceedings and the availability of legal aid.

7.4 In the absence of legal aid for constitutional motions and bearing in mind that the author was arrested in August 1981, convicted in March 1983, and that his appeals were dismissed in July 1986 by the Court of Appeal of Jamaica and in October 1987 by the Judicial Committee of the Privy Council, the Committee finds that recourse to the Supreme (Constitutional) Court is not required under article 5, paragraph 2 (b), of the Optional Protocol in this case, and that there is no reason to reverse the Committee's decision on admissibility of 17 October 1990.

7.5 As to the allegation concerning the author's ill-treatment by the police, the Committee notes that this claim was reproduced in resolution 29/88 approved by the Inter-American Commission on Human Rights, a copy of which was transmitted by the Committee to the State party on 28 April 1989. Furthermore, while the allegation of a violation of article 10 does not expressly figure under the header "Alleged Breaches of the International Covenant on Civil and Political Rights" (p. 8 of the author's initial communication), reference to ill-treatment by the police is made on pages 51 and 52 of this communication, which was integrally transmitted to the Government of Jamaica a year and a half before the Committee's decision on admissibility. In the circumstances, the State party cannot claim that it was not apprised of the allegation of ill-treatment; nor is the Committee barred from considering the author's submission in its integrity, or from proceeding with its own evaluation as to whether the facts as presented may raise issues under certain provisions of the Covenant, even if these provisions have not been specifically invoked.

8.1 With respect to the alleged violations of the Covenant, four issues are before the Committee: (a) whether the judge showed bias in his evaluation of the evidence or in his instructions to the jury; (b) whether the overlooking of the significance of the time of death amounted to a violation of the author's right to a fair trial; (c) whether the author was afforded adequate time for the preparation of his defence and could secure the examination of witnesses on his behalf under the same conditions as witnesses against him; and (d) whether the alleged ill-treatment by the police violated his rights under article 10.

8.2 With respect to the first issue, the Committee reaffirms its established jurisprudence that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not in principle for the Committee to make such an evaluation or to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. In the present case, the Committee has been requested to examine matters belonging in the latter category.

8.3 In respect of the issue of the significance of the time of death of the victim, the Committee begins by noting that the post-mortem on the deceased was performed on 1 September 1981 at approximately 1 p.m., and that the expert concluded that death had occurred 47 hours before. His conclusion, which was not challenged, implied that the author was already in police custody when the deceased was shot. The information was available to the Court; given the seriousness of its implications, the Court should have brought it to the attention of the jury, even though it was not mentioned by counsel. Furthermore, even if the Judicial Committee of the Privy Council had chosen to rely on the facts relating to the post-mortem evidence, it could not have addressed the matter as it was introduced for the first item at that stage. In all the circumstances, and especially given that the trial of the author was for a capital offence, this omission must, in the Committee's view, be deemed a denial of justice and as such constitutes a violation of article 14, paragraph 1, of the Covenant. This remains so even if the placing of this evidence before the jury might not, in the event, have changed their verdict and the outcome of the case.

8.4 The right of an accused person to have adequate time and facilities for the preparation of his or her defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his or her counsel to prepare the defence for the trial; this requirement applies to all the stages of the judicial proceedings. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. There was considerable pressure to start the trial as scheduled on

17 March 1983, particularly because of the return of the deceased's wife from the United States to give evidence; moreover, it is uncontested that Mr. Wright's counsel was instructed only on the very morning the trial was scheduled to start and, accordingly, had less than one day to prepare Mr. Wright's defence and the cross-examination of witnesses. However, it is equally uncontested that no adjournment of the trial was requested by either of Mr. Wright's counsel. The Committee therefore does not consider that the inadequate preparation of the defence may be attributed to the judicial authorities of the State party; if counsel had felt that they were not properly prepared, it was incumbent upon them to request the adjournment of the trial. Accordingly, the Committee finds no violation of article 14, paragraph 3 (b).

8.5 With respect to the alleged violation of article 14, paragraph 3 (e), it is uncontested that the trial judge refused a request from counsel to call a witness on Mr. Wright's behalf. It is not apparent, however, that the testimony sought from this witness would have buttressed the defence in respect of the charge of murder, as it merely concerned the nature of the injuries allegedly inflicted on the author by a mob outside the Waterford police station. In the circumstances, the Committee finds no violation of this provision.

8.6 Finally, the Committee has considered the author's allegation that he was ill-treated by the police. While this claim has only been contested by the State party in so far as its admissibility is concerned, the Committee is of the view that the author has not corroborated his claim, by either documentary or medical evidence. Indeed, the matter appears to have been raised in the court of first instance, which was unable to make a finding, and brought to the attention of the Court of Appeal. In the circumstances and in the absence of further information, the Committee is unable to find that article 10 has been violated.

8.7 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal. c/ In the present case, since the final sentence of death was passed without having met the requirements for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee disclose a violation of article 14, paragraph 1, and consequently of article 6 of the Covenant.

10. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that

Mr. Clifton Wright, a victim of violations of article 14 and consequently of article 6, is entitled, according to article 2, paragraph 3 (a), of the Covenant to an effective remedy, in this case entailing his release, as so many years have elapsed since his conviction.

11. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

Notes

a/ See sect. B above, Raphael Henry v. Jamaica, views adopted on 1 November 1991, forty-third session.

b/ See sect. J above, Aston Little v. Jamaica, views adopted on 1 November 1991, forty-third session.

c/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, para. 7.

Appendix

Individual opinion of Mr. Bertil Wennergren, submitted pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's views on communication No. 349/1989 (Clifton Wright v. Jamaica)

I agree with the Committee to the extent that the trial judge should have brought the implications of the pathologist's estimation that the victim's death had occurred 47 hours before the post-mortem to the attention of the jury. I do not, however, consider that these implications were such that they could have influenced either verdict or sentence. I therefore disagree with the finding that said omission must be deemed a denial of justice and that this remains so even if the placing of this evidence before the jury might not, in the event, have changed the verdict and the outcome of the case. In my opinion, the omission was a minor irregularity that did not affect the conduct of the trial inasmuch as article 14 of the Covenant is concerned. My reasons are the following.

The pathologist testified both in respect of how and when death of the victim occurred. In the latter respect, he first stated that the "post-mortem elimination was performed at the Spanish Town hospital morgue 47 hours after death". Upon the judge's question "When you [said] the examination was 47 hours after death you are estimating it?", he replied "That is my examination". This estimation was not questioned during the trial, although death must have occurred 41, and not 47, hours before the post-mortem examination, namely when the victim's wife began to search him. The discrepancy was also not addressed before or by the Court of Appeal. The first to raise the point was counsel before the Judicial Committee of the Privy Council, who made the point the central issue of the author's petition for special leave to appeal, although as a matter of law the Judicial Committee could not consider it. The Human Rights Committee thus is the first instance to consider this point on its merits.

I believe that an explanation for the situation described above is easy to find. The pathologist's testimony contained no more than a mere estimation, and it is known that it is impossible to determine the time of death with exactitude in a case such as the present one. Pathologists' estimations must allow for a broad margin of uncertainty. This implies that the pathologist's estimation did not really conflict with the remainder of the evidence against the author. I would on the contrary say that it was consistent with it. However, I believe, as the Committee, that the judge should have told the jury not only about how they must evaluate the testimony of the pathologist in respect of the cause of death but also in respect of the time of death. He could not reasonably assume that what he knew about margins of uncertainty and errors of appreciation was also known to the members of the jury. However, I do not think that this omission affected the deliberations of the jury negatively. As the estimation was not in conflict with the other evidence, and this other evidence was indeed convincing, there is in my view no reason to conclude that there has been a denial of justice. I note in this context that the Court of Appeal, when dismissing the author's appeal, stated that "this was in fact one of the strongest cases against an accused that we have seen".

Bertil WENNERGREN

P. Communication No. 395/1990, M. Th. Sprenger v. the Netherlands (views adopted on 31 March 1992, at the forty-fourth session)*

Submitted by:	M. Th. Sprenger (represented by counsel)
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	8 February 1990
Date of decision on admissibility:	22 March 1991

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 March 1992,

Having concluded its consideration of communication No. 395/1990, submitted to the Human Rights Committee by Ms. M. Th. Sprenger under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is M. Th. Sprenger, a citizen of the Netherlands, residing at Maastricht, the Netherlands. She claims to be a victim of a violation by the Netherlands of article 26 of the International Covenant on Civil and Political Rights.

2.1 The author received unemployment benefits under the Netherlands Unemployment Benefits Act until 20 August 1987. At that date, the maximum benefits period came to an end. As a result of the termination of her benefits payment under the Netherlands Unemployment Benefits Act, her public health insurance also expired, pursuant to the Health Insurance Act. The author then applied for benefits pursuant to the State Group Regulations for Unemployed Persons, under which she would be equally entitled to public insurance under the Health Insurance Act.

2.2 The author's application was rejected on the grounds that she cohabited with a man whose income was higher than the benefits then applicable under the State Group Regulations for Unemployed Persons. Her companion was, through his employment, insured under the Health Insurance Act. Under article 4, paragraph 1, of the Health Insurance Act, the spouse of an insured person may also be insured if she is below 65 years of age and shares the household, and if the insured person is considered as her, or his, breadwinner. The author explains that she had lived with her companion since October 1982 and that, on 8 August 1983, they formally registered their relationship by notarial contract, providing for the shared costs of the common household, property and dwelling.

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* An individual opinion submitted by Mr. N. Ando, Mr. K. Herndl and Mr. B. Ndiaye is appended.

2.3 The author's application for registration as a co-insured person with her partner was rejected by the regional social security body on 4 August 1987, on the ground that the Health Insurance Act did not provide for co-insurance to partners other than spouses. In this context, the author stresses that the very circumstance that she shares a household with her partner prevents her from receiving benefits under the State Group Regulations for Unemployed Persons, by virtue of which she herself would be insured under the Health Insurance Act, in which case the question of co-insurance would never have arisen.

2.4 On 3 February 1988, the Board of Appeal (Raad van Beroep) quashed the decision of 4 August 1987, stating that the discrimination between an official marriage and a common law marriage constituted discrimination within the meaning of article 26 of the Covenant. The judgement was in turn appealed by the regional social security board to the Central Board of Appeal (Centrale Raad van Beroep) which, on 28 September 1988, ruled that the decision of 4 August 1987 did not contravene article 26 of the Covenant. In its decision, the Central Board of Appeal referred to the decision of the Human Rights Committee in communication No. 180/1984, Danning v. the Netherlands a/ in which it had been held that, in the circumstances of the case, a difference of treatment between married and unmarried couples did not constitute discrimination within the meaning of article 26 of the Covenant.

2.5 The author states that the Health Insurance Act has been amended and that it recognizes the equality of common law and official marriages as of 1 January 1988.

Complaint

3. The author claims that she is a victim of a violation by the State party of article 26 of the Covenant, because she was denied co-insurance under the Health Insurance Act, which distinguished between married and unmarried couples, whereas other social security legislation already recognized the equality of status between common law and official marriages.

Committee's admissibility decision

4.1 At its forty-first session, the Committee considered the admissibility of the communication. It noted that the State party had not raised any objection to the admissibility of the communication and it ascertained that the same matter was not being examined under another procedure of international investigation or settlement.

4.2 On 22 March 1991, the Committee declared the communication admissible in respect of article 26 of the Covenant.

State party's explanations and author's comments thereon

5.1 In its submission, dated 15 November 1991, the State party argues that the differentiation between married and unmarried persons in the Health Insurance Act does not constitute discrimination within the meaning of article 26 of the Covenant. In this context, it refers to the Committee's views in communication No. 180/1984.

5.2 The State party contends that, although the author has entered into certain mutual obligations by notarial contract, considerable differences between her status and that of a married person remain. The State party states that the Civil Code imposes additional obligations upon married persons, which the author and her partner have not taken upon themselves; it mentions, inter alia, the imposition of a maintenance allowance payable to the former spouse. The State party argues that nothing prevented the author from entering into the legal status of marriage, subsequent to which she would have been entitled to all corresponding benefits.

5.3 The State party submits that it has at no time taken any general decision to abolish the distinction between married persons and cohabitants, and that it has introduced equal treatment only in certain specific situations and on certain conditions. It further submits that each social security law was reviewed separately with regard to the introduction of equal treatment between married persons and cohabitants; this explains why in some laws equal treatment was incorporated sooner than in others.

6.1 In her reply to the State party's submission, the author submits that the differences between married and unmarried couples should be seen in the context of family law; they do not affect the socio-economic circumstances, which are similar to both married and unmarried couples.

6.2 The author further submits that the legal status of married couples and cohabitants, who confirmed certain mutual obligations by notarial contract, was found to be equivalent by the courts before. She refers in this context to a decision of the Central Board of Appeal, on 23 November 1986, concerning emoluments to married military personnel. She further contends that, as of 1 January 1987, equal treatment was accepted in almost all Dutch social security legislation, except for the Health Insurance Act and the General Widows and Orphans Act.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee observes that, although a State is not required under the Covenant to adopt social security legislation, if it does, such legislation must comply with article 26 of the Covenant. Equality before the law implies that any distinctions in the enjoyment of benefits must be based on reasonable and objective criteria. b/

7.3 In the instant case, the State party submits that there are objective differences between married and unmarried couples, which justify different treatment. In this context the State party refers to the Committee's views in Danning v. the Netherlands, in which a difference of treatment between married and unmarried couples was found not to constitute discrimination within the meaning of article 26 of the Covenant.

7.4 The Committee recalls that its jurisprudence permits differential treatment only if the grounds therefore are reasonable and objective. Social developments occur within States parties and the Committee has in this context taken note of recent legislation reflecting these developments, including the amendments to the Health Insurance Act. The Committee has also noted the explanation of the State party that there has been no general abolition of the distinction between married persons and cohabitants, and the reasons given for the continuation of this distinction. The Commitee finds this differential treatment to be based on reasonable and objective grounds. The Committee recalls its findings in communication No. 180/1984 and applies them to the present case.

7.5 Finally, the Committee observes that the decision of a State's legislature to amend a law does not imply that the law was necessarily incompatible with the Covenant; States parties are free to amend laws that are compatible with the Covenant, and to go beyond Covenant obligations in providing additional rights and benefits not required under the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any article of the International Covenant on Civil and Political Rights.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sect. C, views adopted on 9 April 1987 at the twenty-ninth session.

b/ See ibid., sect. B, Broeks v. the Netherlands, communication No. 172/1984; and ibid., sect. D, Zwaan-de Vries v. the Netherlands, communication No. 182/1984, views adopted on 9 April 1987.

Appendix

Individual opinion of Mr. Nisuke Ando, Mr. Kurt Herndl and Mr. Birame Ndiaye pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's views on communication No. 395/1990, M. Th. Sprenger v. the Netherlands

We concur in the Committee's finding that the facts before it do not reveal a violation of article 26 of the Covenant. We further believe that this is an appropriate case to expand on the Committee's rationale, as it appears in these views and in the Committee's views in communications Nos. 180/1984, Danning v. the Netherlands and 182/1984, Zwaan-de-Vries v. the Netherlands. a/

While it is clear that article 26 of the Covenant postulates an autonomous right to non-discrimination, we believe that the implementation of this right may take different forms, depending on the nature of the right to which the principle of non-discrimination is applied.

We note, firstly, that the determination whether prohibited discrimination within the meaning of article 26 has occurred depends on complex considerations, particularly in the field of economic, social and cultural rights. Social security legislation, which is intended to achieve aims of social justice, necessarily must make distinctions. While the aims of social justice vary from country to country, they must be compatible with the Covenant. Moreover, whatever distinctions are made must be based on reasonable and objective criteria. For instance, a system of progressive taxation, under which persons with higher incomes fall into a higher tax bracket and pay a greater percentage of their income for taxes, does not entail a violation of article 26 of the Covenant, since the distinction between higher and lower incomes is objective and the purpose of more equitable distribution of wealth is reasonable and compatible with the aims of the Covenant.

Surely, it is also necessary to take into account the reality that the socio-economic and cultural needs of society are constantly evolving, so that legislation - in particular in the field of social security - may well, and often does, lag behind developments. Accordingly, article 26 of the Covenant should not be interpreted as requiring absolute equality or non-discrimination in that field at all times; instead, it should be seen as a general undertaking on the part of States parties to the Covenant regularly to review their legislation in order to ensure that it corresponds to the changing needs of society. In the field of civil and political rights, a State party is required to respect Covenant rights such as the right to a fair trial, to freedom of expression and freedom of religion, immediately from the date of entry into force of the Covenant, and to do so without discrimination. On the other hand, with regard to rights enshrined in the International Covenant on Economic, Social and Cultural Rights, it is generally understood that States parties may need time for the progressive implementation of these rights and to adapt relevant legislation in stages; moreover, constant efforts are needed to ensure that distinctions that were reasonable and objective at the time of enactment of a social security provision are not rendered unreasonable and discriminatory by the socio-economic evolution of society. Finally, we recognize that legislative review is a complex process entailing consideration of many factors, including limited financial resources, and the potential effects of amendments on other existing legislation.

In the context of the instant case, we have taken due note of the fact that the Government of the Netherlands regularly reviews its social security legislation, and that it has recently amended several acts, including the Health Insurance Act. Such review is commendable and in keeping with the requirement, in article 2, paragraphs 1 and 2, of the Covenant, to ensure the enjoyment of Covenant rights and to adopt such legislative or other measures as may be necessary to give effect to Covenant rights.

Nisuke ANDO
Kurt HERNDL
Birame NDIAYE

Notes

a/ See Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sects. C and D, views adopted on 9 April 1987.

Q. Communication No. 410/1990, Csaba Párkányi v. Hungary (views adopted on 27 July 1992, at the forty-fifth session)*

Submitted by:	Csaba Párkányi
Alleged victim:	The author
State party:	Hungary
Date of communication:	15 January 1990
Date of decision on admissibility:	22 March 1991

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 1992,

Having concluded its consideration of communication No. 410/1990, submitted to the Human Rights Committee by Csaba Párkányi under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication, dated 15 January 1990, is Csaba Párkányi, a Hungarian citizen and resident of the city of Siofok, at the time of submission serving a prison sentence at the Budapest Penitentiary, but subsequently released by virtue of an amnesty. He claims to be the victim of violations by Hungary of articles 9, 10 and 11 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Hungary on 7 December 1988.

2.1 In 1980, the author became the managing director of the Building Cooperative Joint Venture of the city of Siofok. For several years, he led the company to prosperity, but a general economic downturn towards the end of 1984 seriously affected performance. At approximately the same time, the local party committee of the Hungarian Socialist Workers' party initiated an investigation against him and the company. According to the author, this investigation was conducted with a view to removing him from his position.

2.2 In August 1986, the director of one of the company's departments was arrested on charges of fraud and embezzlement of funds. On 3 September 1986, the author was arrested and charged with being an accessory to fraud and embezzlement. The author claims that the activities of the department under investigation represented no more than 5 per cent of the company's total turnover and that, as the departmental activities were carried out some 150 kilometres from headquarters, it was difficult for him to verify them and, if necessary, intervene.

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* An individual opinion submitted by Mr. Bertil Wennergren is appended.

2.3 On 8 February 1989, the author was convicted by the city court of Kapósvar and sentenced to two years' and eight months' imprisonment; property valued at 400,000 forint belonging to him was confiscated. On 13 July 1989, the Court of Appeal confirmed the prison sentence but reduced the confiscation of property to 130,000 forint. It further ordered the author to pay legal expenses in the amount of 60,000 forint. His lawyer applied for leave to appeal to the Supreme Court, but the petition was dismissed in September 1989. The author, who began serving his sentence on 13 August 1989, appealed to the Minister of Justice and requested a retrial, without success. On 26 June 1990, he was released by virtue of an amnesty decree.

Complaint

3.1 The author contends that his arrest and detention by the police of Somogy County were arbitrary, since no adequate evidence could be produced to support the charges, and that the conditions of his pre-trial detention were deplorable. In this context, he notes that detainees in the police lock-up, including himself, were dressed in rags, and that he was not able to retrieve his own clothes for an entire week. Only five minutes were allowed for basic hygiene in the morning, and a shower could be taken only once a week; similarly, a mere five minutes of recreation per day were allowed, which consisted of a walk in an open place about 20 square metres in size, against the walls of which warders frequently urinated. Meals were wholly inadequate, and although the author was able to receive some food from home during weekends, he lost over 10 kilograms during five and a half months of pre-trial detention. The warders allegedly intimidated him by suggesting that if no confession was obtained, they would fabricate different, constantly changing, charges so as to justify an extension of the detention. This, the author adds, exposed him to continued mental stress.

3.2 The author contends that he was never able to see a copy of his indictment, although, when summoned to the party office for the first time, the investigators of his case were in possession of a copy.

3.3 The author submits that he did not have a fair trial, and that the judicial proceedings against him were a travesty of justice. Thus, his application to have witnesses testify on his behalf was rejected by the court; in particular, the legal adviser of his former company, a witness whose testimony was requested by both the prosecution and the author, was never heard, in spite of the fact that he was knowledgeable about the company's financial situation. The author further contends that although some of the prosecution witnesses indirectly confirmed his own version of the case, the court passed over them in silence.

3.4 According to the author, the courts failed to observe the applicable rules and directives of the Supreme Court of Hungary governing the evaluation of evidence. By failing to carry out a comprehensive evaluation of witness testimony, the courts allegedly violated the presumption of innocence. The only evidence used against him was that of a former colleague, whose testimony, according to the author, was not only in contradiction with that of other prosecution witnesses but also internally inconsistent. The court rejected the testimony as an admissible defence for the colleague and accepted it as evidence against the author. Finally, the author contends that the court failed to consider highly relevant company documents, such as his instructions to company departments, the operational rules of the company, and measures adopted by him to streamline company activities.

State party's observations

4. The State party concedes the admissibility of the communication. Although the arrest and then the detention (from 3 September 1986 until 16 February 1987) occurred prior to the entry into force of the Optional Protocol for Hungary on 7 December 1988, conviction on first instance occurred thereafter, on 8 February 1989. The State party notes that since the events that occurred before 7 December 1988 cannot be considered separately from the criminal proceedings against the author, the communication is admissible *ratione temporis*; it adds that all available domestic remedies have been exhausted in the case.

Committee's admissibility decision

5.1 During its forty-first session, in March 1991, the Committee examined the admissibility of the communication. It considered that the author had failed to substantiate his allegation of a violation of article 11 of the Covenant. It further observed that, to the extent that the author's allegations pertained to evaluation of facts and evidence in his case, the communication was inadmissible under article 3 of the Optional Protocol. However, it found that the author's claim that he was unable to obtain a copy of his indictment might raise issues under article 14, paragraph 1, and that his claim that the court denied his request to have witnesses testify on his behalf might raise issues under article 14, paragraph 3, of the Covenant.

5.2 The Committee, accordingly, declared the communication admissible in so far as it might raise issues under articles 10 and 14, paragraphs 1 and 3 (e), of the Covenant.

State party's observations and author's comments thereon

6.1 By submission, dated 22 October 1991, the State party submits that it has conducted an investigation into the author's allegations regarding the circumstances of his detention. It concedes that, after being detained, the author's clothing was replaced by prison clothes; it argues that this was necessary for reasons of security, since the author was wearing jeans with a zipper, which might have caused injury. It submits that the investigating officer requested the author's wife to bring suitable clothes; it argues that the arrival of these clothes after one week, cannot be regarded as unreasonably long.

6.2 Regarding the author's complaint that only five minutes per day were allowed for personal hygiene, the State party concedes that detainees had relatively little time for personal hygiene and walking. It submits that, in accordance with the regulations, one and a half hour was available for 12 cells, housing 40 persons. As regards the walking space, the State party states that the area measures 35 square metres, and not 20, as alleged by the author.

6.3 The State party further submits that the investigation has revealed that the author complained about the food only once; it states that this complaint did not refer to the quantity, but to the quality of the food, which he found too greasy. It further submits that the author was examined by a police doctor, who concluded that no medical obstacle existed to the author's detention.

6.4 The State party emphasizes that the detention regulations have recently been amended. It argues, however, that the regulations in force during the author's detention were fully in compliance with the Covenant.

6.5 As regards the author's allegation that he had not been given a copy of the indictment, the State party explains that the regulations at the time of the author's arrest provided for the transmission of the indictment to the party committee, in case of party members committing an offence. It emphasizes that this provision has since been repealed.

6.6 The State party further submits that the author received a copy of the indictment before the trial against him started. In this connection, the State party argues that the Hungarian Code of Criminal Procedure is in harmony with the provisions of the Covenant. The law prescribes that, on the first day of the trial, the prosecutor asks the accused and his counsel whether a copy of the indictment has been duly transmitted to them eight days before the session. If the indictment has not been transmitted in time, the accused and counsel have the right to raise an objection and ask for the adjournment of the session. The State party states that the trial transcript shows that no objection was raised by the author or his counsel on the first day of the trial.

6.7 With regard to the author's allegation that his request to have witnesses testify on his behalf was denied by the Court, the State party concedes that the trial transcript shows that the Court did not hear a certain witness, whose testimony was requested by the author. However, the State party submits that 28 of the 42 witnesses and two experts (requested by the prosecution) were heard. It contends that the witnesses who were not heard could not be reached at the addresses provided. It further argues that both the Court of first instance and the Court of Appeal considered that it was not necessary to hear the particular witness requested by the author.

6.8 Finally, the State party states that its Ministry of Justice never received the application for review, which the author allegedly sent on 30 October 1989. Moreover, it observes that the Minister of Justice has no power to review final judgements made by the courts.

7.1 In his comments on the State party's submission, the author states that he has nothing to add to his earlier complaints about the conditions of detention. He reiterates that he lost 10.5 kilograms in five and a half months of detention.

7.2 He further argues that it is incredible that the State could not find the addresses of 12 witnesses. He alleges that the State never tried to summon them. He argues that in a fair trial all witnesses requested should be summoned; that the Court did not find it necessary to summon the witness requested by him, is, according to the author, a violation of the presumption of innocence. He finally submits that the trial records would support his allegations, but that he does not have the means to have them translated.

Examination of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee welcomes the detailed investigation initiated by the State party with regard to the author's claim that the circumstances in detention violated his rights under article 10 of the Covenant. The Committee notes that the State party has not objected to the competence of the Committee to consider this claim, although it relates to events that occurred prior to the entry into force of the Optional Protocol for Hungary, albeit after the entry into force of the Covenant. In these specific circumstances, the Committee considers that it is not precluded from examining the allegation.

8.3 As to the substance of the claim, the Committee considers that, in the light of the information provided by the State party, it cannot be concluded that the food was insufficient and that the author was made to wear rags. However, the Committee notes that the State party does not dispute the author's allegation that he was allowed only five minutes per day for personal hygiene and five minutes for exercise in the open air. The Committee considers that such limitation of time for hygiene and recreation is not compatible with article 10 of the Covenant.

8.4 As to the author's claim that he had not been able to obtain a copy of the indictment before the first day of the trial, the Committee notes that the State party has contested this allegation. In the absence of any further comments of the author, the Committee finds that the facts before it do not disclose a violation of article 14, paragraph 1, of the Covenant.

8.5 As to the author's remaining claim that the Court failed to call a certain witness who was of importance to his defence, the Committee notes that the State party has argued that the Court had decided that it was not necessary to hear that witness. The author of the communication has not provided evidence which would justify concluding that the Court's refusal, upheld by the Court of Appeal, was such as to infringe the equality of arms between the prosecution and the defence and that the circumstances under which defence witnesses were heard were different from those under which prosecution witnesses were heard. Consequently, the Committee is not able, in the present case, to find that there has been a violation of article 14, paragraph 3 (e).

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 10, paragraph 1, of the Covenant.

10. The Committee is of the view that the State party should offer Mr. Párkányi an appropriate remedy. Furthermore, while the Committee welcomes

the general improvements in prison conditions afforded under recent amendments, it observes that legal provision should be made for adequate time both for hygiene and exercise.

11. The Committee wishes to receive information, within 90 days, of any relevant measures taken by the State party in respect of the Committee's views.

Appendix

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure concerning the Committee's views on communication No. 410/1990, Párkányi v. Hungary

While the Covenant entered into force for Hungary on 23 March 1976, the Optional Protocol only entered into force on 7 December 1988. Part of the instant communication concerns the author's detention, which lasted from 3 September 1986 to 16 February 1987, i.e. prior to the entry into force of the Optional Protocol for Hungary.

According to article 1 of the Optional Protocol, no communication shall be received by the Committee if it concerns a State party to the Covenant, which is not a party to the Protocol. A State party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant.

According to article 25 of the Vienna Convention on the Law of Treaties, a treaty or part of a treaty may be applied provisionally pending its entry into force if the negotiating States have so agreed. No such agreement about a provisional application of the Protocol for Hungary exists. Article 28 of the Vienna Convention, regarding non-retroactivity of treaties, provides clear guidance in this respect: it states that, unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

The Committee's jurisprudence has developed in accordance with that provision. For example, in communication No. 457/1991 (A.I.E. v. Libyan Arab Jamahiriya) a/ the Committee observes that the Optional Protocol cannot be applied retroactively and concludes "that it is precluded *ratione temporis* from examining the author's allegations".

The instant case can be distinguished from the established jurisprudence of the Committee with regard to the application of the Optional Protocol *ratione temporis* in that Hungary has not objected to the competence of the Committee to consider those of the author's claims which relate to events that occurred before the entry into force of the Optional Protocol for Hungary. However, I do not agree with the majority's conclusion that the Committee in these specific circumstances is not precluded from examining the allegation, since I am of the opinion that the Committee is acting beyond its competence in doing so.

The principles enshrined in article 28 of the Vienna Convention are well-established principles of international law; in most legal systems similar principles form the basis for the legal rules regulating contractual obligations. Their main objective is to create legal presumptions to facilitate the conclusion of treaties, rationalize their application and prevent unnecessary disputes between parties. These principles should therefore be strictly applied.

In my opinion a State party may consent to a wider application of the Optional Protocol *ratione temporis* only by an agreement which is concluded with the other contracting States parties. It falls outside the competence of the Human Rights Committee under article 1 of the Optional Protocol to negotiate with a State party the retroactive application of the Optional Protocol.

Bertil WENNERGREN

Notes

a/ See annex X, sect. AA, *A.I.E. v. Libyan Arab Jamahiriya*, decision of 7 November 1991, forty-third session.

R. Communication No. 415/1990, Dietmar Pauger v. Austria (views adopted on 26 March 1992, at the forty-fourth session)*

Submitted by: Dietmar Pauger

Alleged victim: The author

State party: Austria

Date of communication: 5 June 1990

Date of decision on admissibility: 22 March 1991

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 1992,

Having concluded its consideration of communication No. 415/1990, submitted to the Human Rights Committee by Mr. Dietmar Pauger under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

Facts as submitted by the author

1. The author of the communication is Dietmar Pauger, an Austrian citizen born in 1941 and a resident of Graz, Austria. He claims to be a victim of a violation by Austria of article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force with respect to Austria on 10 March 1988.

2.1 The author works as a university professor. His wife died on 23 June 1984. She had been a civil servant and employed as a teacher in a public school in the province of Styria (Land Steiermark). On 24 August 1984, the author submitted a pension claim pursuant to the Pension Act of 1965 (Pensionsgesetz 1965). He notes that the Pension Act granted preferential treatment to widows, as they would receive a pension, regardless of their income, whereas widowers could receive pensions only if they did not have any other form of income. Since the author was gainfully employed, the provincial government of Styria (Steiermärkische Landesregierung) rejected his claim, which was similarly dismissed on appeal by the Constitutional Court of Austria (Verfassungsgerichtshof).

2.2 Subsequently, the eighth amendment to the Pension Act (8. Pensionsgesetznovelle) of 22 October 1985 introduced a general widower pension, applicable retroactively from 1 March 1985. However, a three-phase pension scheme was set up, providing reduced benefits in the first two stages: one third of the pension as of 1 March 1985, two thirds as of 1 January 1989, the full pension as of 1 January 1995.

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* An individual opinion submitted by Mr. Nisuke Ando is appended.

2.3 On 13 May 1985 the author again applied for a widower's pension, which was granted at the reduced (one-third) level provided for in the eighth amendment. However, according to a particular provision of this amendment, applicable only to civil servants, the pension initially was not paid to the author but placed "in trust".

2.4 The author subsequently appealed to the Constitutional Court, requesting (a) payment of the full pension; and (b) the annulment of the provision stipulating that pensions of civil servants are "kept in trust" (Ruhensbestimmung). By decision of 16 March 1988, the Constitutional Court held the Ruhensbestimmung to be unconstitutional, but did not settle the question of the constitutionality of the three phases of pension benefits for widowers. After yet another appeal, the Constitutional Court dismissed, on 3 October 1989, the author's request for a full pension and the annulment of the three phases of implementation.

Complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant, because, whereas a widow would have received a full pension under similar circumstances, he, as a widower, received no pension at all from 24 June 1984 to 28 February 1985, and has received only a partial pension since then. In particular, he contends that the inequality in pension benefits resulting from the three phases of implementation of the eighth amendment to the Pension Act constitutes discrimination, since the differentiation between widows and widowers is arbitrary and cannot be said to be based on reasonable and objective criteria.

Committee's admissibility decision

4. At its forty-first session, the Committee considered the admissibility of the communication, noting that the State party had not raised any objections to admissibility. On 22 March 1991, the Committee declared the communication admissible in respect of article 26 of the Covenant.

State party's explanations and author's comments thereon

5.1 In its submission, dated 8 October 1991, the State party argues that the former Austrian pension legislation was based on the fact that in the overwhelming majority of cases only the husband was gainfully employed, and therefore only he was able to acquire an entitlement to a pension from which his wife might benefit. It submits that, in response to changed social conditions, it amended both family legislation and the Pension Act; equality of the husband's position under pension law is to be accomplished in a number of successive stages, the last of which will be completed on 1 January 1995.

5.2 The State party further submits that new legislation, designed to change old social traditions, cannot be translated into reality from one day to the other. It states that the gradual change in the legal position of men with regard to their pension benefits was necessary in the light of the actual social conditions, and hence does not entail any discrimination. In this context, the State party points out that the equal treatment of men and women for purposes of civil service pensions has financial repercussions in other areas, as the pensions will have to be financed by the civil servants, from whom pension contributions are levied.

6.1 In his reply to the State party's submission, the author argues that pursuant to amendments in family law, equal rights and duties have existed for both spouses since 1 January 1976, in particular with regard to their income and their mutual maintenance. He further submits that in the public sector men and women receive equal payment for equal services and have also to pay equal pension fund contributions. The author states that there is no convincing reason as to why a period of nearly two decades since the emancipation of men and women in family law should be necessary for the legal emancipation in pension law to take place.

6.2 According to the author, neither the financial burden on the State's budget, nor the fact that many men are entitled to pensions of their own, can be used as arguments against the obligation to treat men and women equally, pursuant to article 26 of the Covenant. The author points out that the legislator could have established other, such as income-related, criteria to distinguish between those who are entitled to a full pension and those who are not. He further submits that the financial burden caused by the equal treatment of men and women under the Pension Act would be comparatively low, because of the small number of widowers who are entitled to such a pension.

Examination of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee has already had the opportunity to express the view a/ that article 26 of the Covenant is applicable also to social security legislation. It reiterates that article 26 does not of itself contain any obligation with regard to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact pension legislation. However, when it is adopted, then such legislation must comply with article 26 of the Covenant.

7.3 The Committee reiterates its constant jurisprudence that the right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.

7.4 In determining whether the Austrian Pension Act, as applied to the author, entailed a differentiation based on unreasonable or unobjective criteria, the Committee notes that the Austrian family law imposes equal rights and duties on both spouses, with regard to their income and mutual maintenance. The Pension Act, as amended on 22 October 1985, however, provides for full pension benefits to widowers only if they have no other source of income; the income requirement does not apply to widows. In the context of said Act, widowers will only be entitled to full pension benefits on equal footing with widows as of 1 January 1995. This in fact means that men and women, whose social circumstances are similiar, are being treated differently, merely on the basis of sex. Such a differentiation is not reasonable, as is implicitly acknowledged by the State party when it points out that the ultimate goal of the legislation is to achieve full equality between men and women in 1995.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the application of the Austrian Pension Act in respect of the author after 10 March 1988, the date of entry into force of the Optional Protocol for Austria, made him a victim of a violation of article 26 of the International Covenant on Civil and Political Rights, because he, as a widower, was denied full pension benefits on equal footing with widows.

9. The Committee notes with appreciation that the State party has taken steps to remove the discriminatory provisions of the Pension Act as of 1995. Notwithstanding these steps, the Committee is of the view that the State party should offer Mr. Dietmar Pauger an appropriate remedy.

10. The Committee wishes to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sects. D and B, Zwaan-de Vries v. the Netherlands, communication No. 182/1984, and Broeks v. the Netherlands, communication No. 172/1984, views adopted on 9 April 1987.

Appendix

Individual opinion of Mr. Nisuke Ando, pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's views on communication No. 415/1990, M. Pauger v. Austria

I do not oppose the Committee's views that the application of the Austrian Pension Act to the author made him a victim of a violation of article 26 of the Covenant; this conclusion is in line with the jurisprudence of the Committee (see Zwaan-de Vries v. the Netherlands, communication No. 182/1984, and Broeks v. the Netherlands, communication No. 172/1984). [a/]

However, concerning the application of the principle of non-discrimination and equality before the law, I would like to point to the following possibility, which the Committee should have taken into account in the adoption of its views: had the author claimed that Austria amend the Pension Act so that the income requirement apply to widows as well as to widowers on equal footing, the Committee would have found it difficult to conclude that the Act is in violation of article 26.

The author himself points out that the legislator could have established "other, such as income-related, criteria" to distinguish between those who are entitled to a full pension and those who are not (see para. 6.2), although such income-related criteria could have deprived widows who have other forms of income of their existing entitlements to full pensions.

This implies that the State party's legislature could have circumvented violation of article 26 either by raising the status of widowers to that of widows or by lowering the status of widows to that of widowers. From a legalistic point of view, either choice might have been compatible with the principle of non-discrimination and equality before the law. Practical considerations, however, suggest that society would hardly have endorsed the second alternative.

Nisuke ANDO

Notes

[a/] See Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sects. D and B.

ANNEX X*

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 233/1987, M.F. v. Jamaica (decision of 21 October 1991, adopted at the forty-third session)

Submitted by: M.F. (name deleted)

Alleged victims: The author

State party: Jamaica

Date of communication: 10 March 1987 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 1991,

Adopts the following:

Decision to revise an earlier decision on admissibility

1. The author of the communication (initial submission dated 10 March 1987) is M.F., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author was convicted of murder in the Home Circuit Court of Kingston on 30 January 1986 and sentenced to death. He had been accused of stabbing and wounding two individuals with an ice pick; one of them, one R.Y., subsequently died. The other person testified against him during the trial. The author indicates that the coroner's verdict was that the victim's death had not been caused by stab wounds but by a fractured skull.

2.2 The author indicates that his privately retained legal representative was not present in court when the trial began and the judge proceeded to empanel the jury. The author refused to enter a plea, but the judge none the less entered a plea of "not guilty" for him. The author submits that the judge chose to proceed in the absence of his lawyer, taking account of police reports that one of the principal prosecution witnesses, one D.T., would not be available if the trial were adjourned.

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* Made public by decision of the Human Rights Committee.

2.3 The author appealed his conviction and sentence, but the Jamaican Court of Appeal dismissed the appeal on 21 May 1987. Subsequently, he sought to obtain the Court of Appeal's judgement, to no avail.

2.4 At the time of submission, the author had not petitioned the Judicial Committee of the Privy Council for special leave to appeal, because he lacked the means to do so. Subsequently, in 1988, he secured pro bono legal representation by a law firm in London for this purpose. In May 1990, following the Committee's decision of 15 March 1990 declaring the case admissible, counsel informed the Committee that he had succeeded in obtaining the judgement of the Court of Appeal, pointing out that it took him over one year and a half to obtain that document and emphasizing that "availability" of relevant court documents should be deemed to refer to practical and reasonably effective methods whereby an appellant or his counsel might receive the appropriate documents. While criticizing the "apparent administrative inefficiency and uncooperativeness" of the State party which, for a considerable time, made the exhaustion of domestic remedies a practical impossibility, he none the less confirms that he is now proceeding with a petition for special leave to appeal to the Judicial Committee on the author's behalf.

Complaint

3.1 The author complains that the conduct of his trial and of his appeal were beset with several irregularities, in violation of article 14 of the Covenant. Thus, he claims that he had wholly inadequate opportunities to consult with his lawyer prior to and during the trial. There was no regular communication with this lawyer prior to the trial, and the lawyer visited him only once, briefly, before its beginning. In court, their contacts were confined to brief exchanges, each of no more than 10 to 15 minutes duration. The author adds that his lawyer was repeatedly absent in court and usually sent telephonic excuses that he had to attend trial dates elsewhere.

3.2 The author concedes that the prosecution witnesses were cross-examined, adding, however, that he had asked for a potential alibi witness, a girl in his company at the time of his arrest, to testify on his behalf, since she allegedly would have been able to cast doubts on the testimony of D.T. His counsel made no attempt to contact this witness.

3.3 As to his appeal, the author maintains that he was not assisted in its preparation and merely informed that a legal aid representative had been assigned to him for the purpose. He addressed two letters to the representative prior to the hearing of the appeal but did not receive a reply. Subsequently, he and his counsel repeatedly requested the written judgement of the Court of Appeal; it is submitted that the delay in obtention of this judgement constitutes a violation of the author's right to have his conviction and sentence reviewed by a higher tribunal according to law.

State party's information and observations

4.1 The State party submits that the communication is inadmissible on the ground that the author has failed to exhaust available domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol. It points out that the author retains the right to petition the Judicial Committee of the Privy Council for special leave to appeal, and that legal aid would be available to him for that purpose pursuant to section 3, paragraph 1, of the Poor Prisoners' Defence Act.

4.2 The State party further adds that doubts as to the availability of the written judgement of the Court of Appeal in the case may be attributable to some confusion over the author's identity. In this context, the Registrar of the Court of Appeal had conveyed the following information:

> "There is an appeal from a [M.F.] convicted of murder on 30 January 1986. Appeal was heard on 21 May 1987. (...) On 19 June 1987 written judgement was given. The Registrar opined that the confusion lay in the name forwarded to the office, i.e. [M.F.]."

4.3 The State party submits that the availability of the reasoned judgement was not at issue at any stage in the proceedings. Further to an interlocutory decision in the case adopted by the Committee's Working Group in October 1989, in which the State party had been requested to make the written judgement of the Court of Appeal available to the author or his counsel, M.F. was provided with a copy.

4.4 The State party submits that in cases similar to the author's where a written judgement was in fact delivered by the Court of Appeal, the obligation to make judgement available to the author of a complaint is discharged upon delivery of the written judgement. Accordingly, the judgement was available to the author and his counsel on 19 June 1987, the date of its delivery.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 During its thirty-eighth session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, it noted the State party's contention that the communication was inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. In this context, the Committee observed that, although the Judicial Committee might in principle hear petitions in the absence of a written judgement from the Court of Appeal, its past practice revealed that all petitions unsupported by the relevant court documents had been dismissed. It therefore considered that if a petition for leave to appeal was to be considered an available and effective remedy, it had to be supported by the judgement from which leave to appeal was sought. The Committee further considered that counsel had made reasonable efforts to obtain the documents in question, and that he was entitled to assume that a petition for special leave to appeal would not be an effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.3 On 15 March 1990, therefore, the Committee declared the communication admissible in as much as it appeared to raise issues under article 14 of the Covenant.

6.1 The Committee has taken note of the State party's submission, made after the adoption of the decision on admissibility, that the Court of Appeal's duty to make its judgement available to the accused is discharged when it has been rendered in writing, and that the judgement of the Court of Appeal would have been available to the author and his counsel as of 19 June 1987.

6.2 While considering that the adoption of the written judgement cannot of itself be equated with "availability" of the same to either the appellant or his counsel, and that there should be reasonably efficient administrative channels through which either appellant or counsel may request and obtain relevant court documents, the Committee notes that author's counsel did obtain a copy of the judgement of the Court of Appeal shortly after the adoption of the decision on admissibility in the case. Thus he now has the documents enabling him effectively to petition the Judicial Committee; the Committee further observes that counsel has confirmed that he will lodge a petition for special leave to appeal on the author's behalf, and therefore is in the process of exhausting an available domestic remedy, potentially providing the judicial redress sought.

7. The Human Rights Committee therefore decides:

(a) That the admissibility decision of 15 March 1990 is set aside;

(b) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party is requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(d) That this decision be communicated to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

B. Communication No. 287/1988, O.H.C. v. Colombia (decision of 1 November 1991, adopted at the forty-third session)

Submitted by:	O.H.C. (name deleted)
Alleged victims:	The author and his brother
State party:	Colombia
Date of communication:	18 February 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 18 February 1988) is O.H.C., a Colombian citizen born in 1954 in Medellin, Colombia, and currently residing in London. He submits the communication on his own behalf and that of his brother, J.O.C., who is unable to himself submit a complaint. It is submitted that both are victims of violations by Colombia of articles 6, 7, 17 and 19 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author was a student and union activist in Colombia prior to his departure for the United Kingdom of Great Britain and Northern Ireland, where he requested refugee status on 2 September 1988. Until September 1987, he had served as vice-president of the National Association of Civil Servants in the National University (Vice Presidente Nacional de la Asociación de Empleados Públicos de la Universidad Nacional). He claims that in 1987 and 1988, he and his brother were repeatedly threatened by paramilitary groups in Medellín, such as the group "Amor por Medellín". Several of his and his brother's friends, all of whom were, like the author, engaged in some form of union activities, were assassinated in the course of 1987.

2.2 On 5 September 1987, on the occasion of the eleventh National Congress of the National Federation of Civil Servants, the author's apartment was ransacked by armed men in uniform, allegedly members of a paramilitary group whom the author suspects to have had links with the Colombian armed forces; subsequently, he received death threats by telephone both at his home and office.

2.3 On 5 February 1988, the author's brother disappeared. Two days later, he was found in a paddock, unconscious and suffering from a cerebral concussion, with signs of having been subjected to torture. He was admitted to a hospital in Antioquía where he was treated, but he never recovered. The author states that his brother has remained mute and semiparalysed as a result of the torture he was subjected to, and that even special therapy has not improved his state. The author suspects that the paramilitary group to which the incident was attributed was backed by the regular armed forces.

2.4 In the latter context, the author contends that the Colombian armed forces regularly practice torture, are engaged in killings and disappearances, and cooperate with, or at the very least tolerate, the activities of paramilitary groups. He points to the report issued by the United Nations Working Group on Enforced or Involuntary Disappearances after its visit to Colombia in the autumn of 1988, which stated that there was indirect proof of armed forces involvement in many of the disappearances occurring in Colombia.

2.5 With respect to his own case, the author indicates that a Sergeant Major from the army, one D.T., told him that his participation in various demonstrations had been noted by the army's intelligence service and aroused considerable suspicion, and that the "army had it in for him" ("estaba muy quemado con el ejército"). In the first half of 1987, an agent of the special security police was uncovered in a union meeting at the University of Antioquía, in which the author participated. All these events, as well as the ill-treatment of his brother, allegedly were designed to induce the author to withdraw from his union activities.

2.6 As to the requirement of exhaustion of domestic remedies, the author made several complaints to the Colombian Attorney-General's Office, to the Police Department in Medellin and to several examining magistrates in Bogota. They promised to investigate his and his brother's cases, but no conclusive result has transpired. In particular, the author filed a complaint with the examining magistrate No. 21 in Bogota, who had been instructed to investigate matters related to interference with union activities in the National University of Colombia. In spite of regular reminders, he did not receive a reply; no one has been indicted, as those responsible for his brother's situation and for the threats against his life have not been identified. The author concludes that the Colombian judicial system is virtually inoperative, as he contends was conceded even by a Colombian Federal Prosecutor, and that, accordingly, he should be deemed to have complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

Complaint

3. It is submitted that the facts described above constitute violations of articles 6, 7, 17 and 19 of the International Covenant on Civil and Political Rights.

State party's information and observations

4.1 The State party submits that the communication is inadmissible on the ground of non-compliance with article 5, paragraph 2 (b), of the Optional Protocol, since the author failed to avail himself of available remedies.

4.2 In this context, it indicates that it has instructed the Office of the Prosecutor-General and the National Office of Criminal Investigations in Bogota to inquire into the author's allegations. As soon as these investigations are concluded, they will be brought to the Committee's attention.

4.3 The State party points to several inconsistencies in the author's presentation of the facts. For instance, he states that his brother was found in a paddock on 7 February 1988, whereas the medical history of J.O.C. submitted by the author indicates that he was admitted to the hospital of Antioquía on 31 January 1988. Secondly, the State party submits that the author has failed to substantiate any violation of his or his brother's right to life. Finally, it contends that there is no evidence in the material submitted by the author that, either directly or indirectly, would implicate the armed forces of Colombia and thus establish the responsibility of the State party. In the State party's opinion, it remains entirely possible that J.O.C. has been the victim of a common crime.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has noted the State party's contention that the author has failed to exhaust available domestic remedies, as well as the author's reply that such remedies would not be effective.

5.3 As to the alleged violations of article 19, the Committee finds that the author has failed to sufficiently substantiate, for purposes of admissibility, his claim; nor has he adduced any documentary evidence in support of his contention.

5.4 As to the author's other allegations, the Committee notes that judicial investigations into the events complained of are pending. While it is certain that these investigations have encountered a number of difficulties, the Committee observes that these difficulties are attributable primarily to the fact that no direct involvement of the State party's regular armed forces has been, or can at present be, proven. While fully understanding the circumstances which led the author to submit his communication under the Optional Protocol, the Committee cannot conclude on the basis of the information before it that domestic remedies in Colombia would be a priori ineffective and that difficulties in the judicial process would absolve the author from exhausting domestic remedies.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision be communicated to the State party and to the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

C. Communication No. 331/1988, G.J. v. Trinidad and Tobago (decision of 5 November 1991, adopted at the forty-third session)

Submitted by: G.J. (name deleted)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 24 September 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 5 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 24 September 1988 and subsequent correspondence) is G.J., a Trinidadian citizen currently awaiting execution at the State prison in Port-of-Spain, Trinidad. He claims to be the victim of a violation by Trinidad and Tobago of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author was charged on 14 July 1980 with the murder, on 11 July 1980, of a two-year-old child, P.J. At the conclusion of the trial, which took place between 18 May and 15 June 1982, the author was convicted of murder and sentenced to death. He appealed to the Court of Appeal on 15 grounds; his appeal was, however, dismissed on 20 December 1984. The Court of Appeal issued its written judgement on 24 December 1984. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 17 May 1990.

2.2 The case for the prosecution was based partly on circumstantial evidence and partly on alleged confessions made by the author himself. Thus, the evidence relied on during the trial was that, on the afternoon of the day before the murder, the child's father took his wife and the child to a golf course near their home in Port Fortin. On that occasion, the child's father alledgedly saw the author, whom he later identified at an identification parade. The author was next seen by one C.A., in the area of the J.'s house at about 7.30 a.m. on the following morning. C.A. purported to identify the author at an identification parade. On the same morning, the child was reported missing, and a handwritten ransom note was found at the gate of the J.'s, giving instructions for the delivery of $30,000 at a designated place. The child's parents immediately reported the facts to the police, which mounted an ambush to sieze the kidnapper. Allegedly, the author was arrested while collecting the ransom. The child's body was later found in a shallow grave, wrapped up in a plastic bag. During the trial, a forensic expert testified that traces of soil found on the author's clothes matched with samples of soil collected on the spot where the child's corpse was discovered. It was further testified by the same expert that the writing paper used for the ransom note and that found later at the author's home were similar.

Complaint

3.1 The author claims that soon after his arrest, he was induced by the arresting officer to give an oral confession incriminating himself. Two days after his arrest, he was allegedly forced to sign a written statement reproducing his previous oral confession.

3.2 The author alleges that the criminal proceedings against him were beset by several irregularities. Thus, the trial judge reportedly showed prejudice against him and his representative by, inter alia, constantly interrupting the latter in his cross-examination of prosecution witnesses, and putting pressure on him to speed up the conduct of the trial. The trial judge is further said to have misdirected the jury on a number of issues of facts and of law; in particular, it is submitted that (a) he erred by not properly instructing the jury on the circumstancial nature of the evidence on which the prosecution relied, (b) he erred in admitting into evidence the oral and the written confessions allegedly made under duress by the author, and (c) he misdirected the jury as to how it should consider those confessions.

3.3 The author further alleges that he was denied adequate legal assistance by his legal aid representative, in that the latter displayed gross negligence in conduct of his defence. Purportedly, he did not sufficiently consult with the author for the preparation of the defence. He is also said to have failed to call one witness, who, according to the author, could have testified in his favour. In addition, before the conclusion of the trial, counsel sought and obtained from the Court permission to withdraw from the case. He later claimed that he withdrew because of the alleged bias and the hostility on the part of the trial judge. He further claimed that he had not been properly retained by the Legal Aid Authority and that he was appearing on behalf of the author only for humanitarian reasons.

3.4 As to the circumstances of the appeal, the author states that he was represented by three legal aid attorneys. Among the 15 grounds of appeal were (a) that the trial judge failed to inform the jury adequately or at all as to when a confession should be considered admissible or not and (b) that the conduct by counsel during the trial was such as to prejudice severely the outcome of the proceedings. The Court of Appeal acknowledged that counsel had displayed gross misconduct during the trial. Reportedly, the presiding judge described the conduct of counsel as "unbecoming" of a barrister, and directed that a copy of the judgement and the proceedings be sent to the Disciplinary Committee of the Bar Association. None the less, the Court of Appeal found that counsel's misconduct did not affect the outcome of the trial, and dismissed the author's appeal. In this connection, the author indicates that, by letter of 14 November 1988, the President of the Bar Association informed him that no legal action was ever taken against his former lawyer and that the Law Association had never received any complaint against him from the Court of Appeal.

State party's observations

4.1 The time-limit for the observations on the admissibility of the communication requested from the State party pursuant to rule 91 of the Committee's rules of procedure, expired on 17 January 1989. In spite of six reminders sent on 23 June 1989, 6 July and 1 Septmeber 1990, 25 January, 26 March and 14 August 1991, no submission has been received from the State party.

4.2 The Government of Trinidad and Tobago is, like every State party to the Optional Protocol to the Covenant, required to investigate in good faith all the allegations of violations of Covenant rights made against it, and to inform the Committee accordingly. The Committee deplores the complete absence of cooperation on the part of the Government of Trinidad and Tobago.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 After a careful consideration of the material placed before it by the author concerning his claims of unfair, the Committee recalls its constant jurisprudence that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and the evidence placed before the domestic courts and to review the interpretation of domestic law by those courts. Similarly, it is for appellate courts and not for the Committee to review specific instructions to the jury by the trial judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The Committee considers that the author's allegations do not reveal that the judge's instructions or the conduct of the trial suffered from such defects. Accordingly, the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party, to the author and to his counsel.

7. The Committee observes, however, that even if the communication is inadmissible, humanitarian measures on behalf of the author, such as the commutation of his sentence, are not excluded.

[Done in English, French, Russian and Spanish, the English text being the original version.]

D. Communication No. 335/1988, M.F. v. Jamaica (decision of 17 July 1992, adopted at the forty-fifth session)

Submitted by: M.F. (name deleted)

Alleged victim: The author

State party: Jamaica

Date of communication: 28 June 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 28 June 1988, and subsequent submissions) is M.F., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his human rights by Jamaica.

Facts as submitted by the author

2.1 The author, a construction worker, was arrested on 1 September 1985, following a shootout at a local cinema during which a woman was killed; later in the month, he was charged with murder. At his trial in the Home Circuit Court, during 1986, the jury failed to return a unanimous verdict. A retrial was ordered, and the author was found guilty as charged and sentenced to death on 19 January 1987.

2.2 The author claims to be innocent; he submits that, at the time of the murder, he was together with some friends at a construction site, some 8 kilometres away from the place of the murder. He claims that he was convicted for political reasons, as he had a longstanding political argument with the investigating officer in the case. He also surmises that the murder was the result of political fighting between two youth gangs, one adhering to the People's National Party and the other to the Jamaican Labour Party. The author himself states that he is a supporter of the Jamaican Labour Party.

2.3 The author contends that during his retrial, his legal aid counsel refused to have him cross-examined, and failed to call witnesses for the defence. The witnesses for the prosecution allegedly committed perjury; according to the author, they told him in prison that they did not know who had fired the shots, but that they decided to testify against him for political reasons. The witnesses, who were awaiting trial for other, apparently unrelated charges, allegedly were released on bail on the condition that they would testify against the author. The author further alleges that the jury was biased against him, and that the judge misdirected the jury about the witnesses.

2.4 The author's appeal was dismissed on 4 December 1987. According to him, his counsel did not consult him about the grounds for the appeal. Although the author had informed counsel about what the witnesses had told him, counsel failed to take statements from these witnesses.

2.5 According to the author, one of the main witnesses for the prosecution, A.K., later gave a statement to the Director of Public Prosecution, expressing regret at having implicated the author. This statement was sent to the Governor-General, who would review the matter in order to reopen the case.

2.6 The author states that, on 27 January 1989, he authorized a lawyer to appeal to the Judicial Committee of the Privy Council. No petition for special leave to appeal, however, appears to have been filed.

Complaint

3. Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submissions that he claims to be a victim of a violation by Jamaica of article 14 of the Covenant.

State party's observations and author's comments

4.1 By submission of 4 July 1989, the State party argues that the communication is inadmissible on the ground of failure to exhaust domestic remedies, since the author can still petition the Judicial Committee of the Privy Council for leave to appeal.

4.2 By further submission of 21 July 1989, the State party informs the Committee that an investigation was conducted into the author's allegation that one of the main witnesses had given a written confession to the Director of Public Prosecution, and that the Governor-General of Jamaica would be requested to review his case under section 29 (1) of the Judicature (Appellate Division) Act. The State party forwards the text of said section, from which it transpires that the Governor-General's power to refer a case to the Court of Appeal is discretionary.

5. In his reply to the State party's observations, the author states that he was informed that the Privy Council would consider his application early in 1990. He further reiterates that he is innocent of the murder for which he was convicted.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication if the author has not exhausted all available domestic remedies. The Committee notes that, in spite of the author's statement that he believed that his case would be heard by the Judicial Committee in 1990, no petition for special leave to appeal to the

Judicial Committee of the Privy Council appears to have been filed. In the circumstances, the Committee concludes that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed pursuant to rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be communicated to the State party and the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

E. Communication No. 340/1988, R.W. v. Jamaica (decision of 21 July 1992, adopted at the forty-fifth session)

Submitted by: R.W. (name deleted)

Alleged victim: The author

State party: Jamaica

Date of communication: 23 November 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 23 November 1988) is R.W., a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of his human rights.

Facts as submitted by the author

2.1 The author, an ex-policeman, states that he was charged with murder in December 1983 and sentenced to death in June 1984, but claims to be innocent. The author does not provide information about the facts of the crime or the circumstances of his arrest. He alleges that the attorney who represented him during the preliminary inquiry and during the trial did so halfheartedly and without commitment. The lawyer allegedly did not argue the defence in line with the author's instructions. The author claims that as a result of the true facts of the case did not emerge and he was sentenced to death.

2.2 Concerning his appeal to the Jamaican Court of Appeal, the author claims that the Registry of the Court informed him only shortly before 16 May 1985 that his appeal was scheduled to be heard on that date. He immediately sent a letter to his lawyer and informed him that he would like to present new evidence, the nature of which the author does not explain, and to forward grounds of appeal. The lawyer allegedly did not reply. The author himself wrote to the Court of Appeal, stating that he wanted to submit fresh evidence and requesting a postponement of the hearing in order to be able to prepare his appeal more thoroughly. Some days later, he was informed that his application for leave to appeal had been dismissed. According to the author, the new evidence and the grounds of appeal had not been put forward. The author suspects that his lawyer was not even present at the hearing, although he was paid "thousands of dollars" by the author's father.

2.3 After the dismissal of the appeal, the Governor-General, on an unspecified date in 1985, signed a warrant for the author's execution. Another lawyer, hired by the author's mother, petitioned the Governor-General and obtained a stay of execution. According to the author, his new lawyer was shocked by the unprofessional manner in which the first lawyer had handled the case. Reportedly, the new lawyer attempted, without success, to secure a retrial. The Jamaica Council for Human Rights was also informed about the new situation.

2.4 According to the author, the Jamaica Council for Human Rights informed him in October 1988 that his case had been dismissed by the Supreme Court of Jamaica, but that no written judgement had been issued. It told him that a petition for special leave to appeal to the Judicial Committee of the Privy Council was being prepared, in cooperation with the author's first lawyer. The author, however, refused to sign the papers, as he did not want his first lawyer to represent him. Subsequently, the Governor-General signed a warrant for the author's execution on 15 November 1988. A priest who visited the author shortly before that date made him sign the papers necessary for a petition for leave to appeal to the Privy Council and, on 14 November 1988, the author obtained another stay of execution. On 14 December 1988, a petition for special leave to appeal was submitted to the Privy Council on behalf of the author by a London law firm. In February 1989, the author was informed that the petition had been dismissed.

Complaint

3.1 The author claims that his human rights have been violated by the Jamaican Court of Appeal because it did not allow him to put forward new evidence and denied him the opportunity to submit grounds for appeal. He further claims that his defence was seriously harmed by the unprofessional attitude of his first lawyer, and by the negligence of the Jamaica Council for Human Rights, which allowed the first lawyer to prepare the petition for special leave to appeal to the Judicial Committee of the Privy Council.

3.2 Although the author does not invoke any of the articles of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation by Jamaica of article 14 of the Covenant.

State party's observations and author's comments thereon

4. By submission of 2 August 1989, the State party argues that the communication is inadmissible on the ground of failure to exhaust all available domestic remedies as required by article 5, paragraph 2 (b), of the Optional Protocol. It submits that the author's appeal to the Judicial Committee of the Privy Council was in respect of his criminal case and that he still has constitutional remedies he may pursue. The State party further submits that the communication does not disclose a violation of any of the rights set forth in the Covenant.

5. In his reply to the State party's observations the author reiterates that his constitutional and human rights were seriously violated by the Jamaican Court of Appeal and the Jamaica Council for Human Rights. He claims that new evidence in his case should be examined by the Jamaican courts. He further states that he is not at present represented by a lawyer.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication if the author has failed to exhaust all available domestic remedies. The Committee notes that the State party claims that the author still has constitutional remedies which he may pursue. The Committee observes that the Supreme (Constitutional) Court of Jamaica has, in recent cases, allowed applications for constitutional redress in respect of alleged breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. The Committee further observes that the author appears to have means to secure legal assistance to file a constitutional motion. In the particular circumstances of the case, the Committee finds that the constitutional remedy referred to by the State party constitutes a remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, which the author has failed to exhaust.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed pursuant to rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be communicated to the State party and the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

F. Communication No. 347/1988, S.G. v. France (decision of 1 November 1991, adopted at the forty-third session)

Submitted by: S.G. (name deleted)

Alleged victim: The author

State party: France

Date of communication: 12 December 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 1991,

Adopts the following:

Decision on admissibility*

1. The author of the communication dated 12 December 1988 is S.G., a French citizen born in 1954 and a resident of Rennes, Bretagne. He claims to be a victim of violations by France of articles 2, 19, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author is an employee of the French Postal and Telecommunications Administration (PTT) in Rennes. He was arrested during the night of 7/8 August 1987, on charges of having defaced several road signs in the area. His action, he states, was part of a campaign led by the movement "Stourm ar Brezhoneg" (Fight for the Breton Language), whose aim is the posting of bilingual road signs, in Breton and French, throughout Brittany.

2.2 In December 1987, the Tribunal de Grande Instance of Rennes fined the author 5,000 French francs and sentenced him to four months of imprisonment (suspended). At the same time, he and two codefendants, Hervé Barzhig a/ and G.B., b/ were sentenced to pay 53,000 French francs, with interest, for the damage caused. On 4 July 1988, the Court of Appeal of Rennes confirmed the judgement of the court of first instance.

2.3 The author contends that since his arrest, he has been subjected to daily harassment by his employer. The official in charge of the administrative investigation against him initially proposed to suspend him from his post for a period of six months. At the end of January 1989, however, after several intercessions made on the author's behalf by concerned citizens and the mayors of several municipalities in Bretagne, the disciplinary committee of PTT in Rennes suspended him from his post for eight days; this sanction was itself suspended. After consultations with his counsel, S.G. did not appeal the decision of the disciplinary committee.

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* An individual opinion submitted by Mrs. Rosalyn Higgins is appended.

Complaint

3. It is submitted that the facts described above constitute violations by France of articles 2, paragraphs 1-3, 19, paragraphs 1 and 2, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

State party's observations

4.1 The State party contends that the communication is inadmissible on a number of grounds. As to the requirement of exhaustion of dometic remedies, it notes that the author failed to appeal the judgement of 4 July 1988 of the Court of Appeal of Rennes to the Court of Cassation.

4.2 As to the alleged violation of article 2 of the Covenant, the State party argues that this provision cannot be violated directly and in isolation. A violation of article 2 can be admitted only to the extent that other rights protected under the Covenant have been violated (para. 1) or if necessary steps to give effects to rights protected under the Covenant have not been taken. A violation of article 2 can only be the corollary of another violation of a Covenant right. The State party contends that the author has not based his argumentation on precise facts and that he cannot demonstrate that he has been a victim of discrimination in his relations with the judicial authorities.

4.3 The State party rejects the author's allegation of a violation of his rights under article 19, paragraph 2, as an abuse of the right of submission. Apart from having failed properly to substantiate his allegation, the State party notes that the author was not prevented, at any stage of the proceedings against him, from freely expressing his views. Defacing road signs cannot, under any circumstances, be construed as a manifestation of the freedom of expression, within the meaning of article 19, paragraph 2.

4.4 Concerning the alleged violation of article 25, the State party notes that a disciplinary sanction of a six months' suspension of the author from his functions was never envisaged against him. The State party further notes that article 25 (c) only protects access to public service; it cannot be interpreted as encompassing a right of security of tenure in public office. In this respect, therefore, the communication is deemed inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

4.5 As to the claim of a violation of article 26, the State party notes that the author has failed to substantiate, for purposes of admissibility, how he was discriminated against on the ground of his language. Furthermore, he chose to express himself in French throughout the proceedings.

4.6 Finally, the State party recalls that, upon ratification of the Covenant, the French Government entered the following declaration in respect of article 27: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned."

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has considered the material placed before it by the parties. As to the claims under articles 19, paragraph 2, 25 (c) and 26 of the Covenant, it considers that the author has failed to substantiate, for purposes of admissibility, how he was denied his freedom of expression, how he was denied his right to access, under general terms of equality, to public service and how he was discriminated against on the ground of language. The Committee observes that the defacing of road signs does not raise issues under article 19 and notes that the material before it shows that S.G. was able to express himself freely throughout the proceedings, that he chose to express himself in French, a language he did not claim not to understand, and that such sanctions as were imposed on him by the postal administration of Rennes were suspended and did not affect his employment in public service.

5.3 As to the claim of a violation of article 27, the Committee reiterates that France's "declaration" made in respect of this provision is tantamount to a reservation and therefore precludes the Committee from considering complaints against France alleging violations of article 27 of the Covenant. c/

5.4 The author has also invoked article 2 of the Covenant. The Committee recalls that article 2 is a general undertaking by States parties and cannot be invoked, in isolation, by individuals under the Optional Protocol. d/ Since the author's claims relating to articles 19, 25 and 26 of the Covenant are inadmissible pursuant to article 2 of the Optional Protocol, it follows that the author cannot invoke a violation of article 2 of the Covenant.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), annex XI, sect. F, communication No. 327/1988, views adopted on 11 April 1991.

b/ See sect. G below.

c/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. A and appendices I and II, communication No. 220/1987, decision of 8 November 1989.

d/ See ibid., annex X, sect. I, communication No. 268/1987, decision of 3 November 1989.

Appendix

Individual opinion of Mrs. Rosalyn Higgins pursuant to rule 92, paragraph 3, of the Committee's rules of procedure concerning communication No. 347/1988 (S.G. v. France)

Taking the view already expressed in respect of communications Nos. 220/1987 and 222/1987 a/ that the French "declaration" on article 27 is not properly to be interpreted as a reservation, I am unable to agree with the provisions of paragraph 5.3 of the decision, that the Committee is precluded from considering complaints against France alleging a violation of article 27 of the Covenant.

However, the facts of the case reveal to me no substantiation of a claim under article 27, and I therefore also reach the conclusion that there are no grounds for admissibility.

Rosalyn HIGGINS

Notes

a/ See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), vol. II, annex X, sect. A, appendix II, and sect. B, appendix II.

G. Communication No. 348/1989, G.B. v. France (decision of 1 November 1991, adopted at the forty-third session)

Submitted by: G.B. (name deleted)

Alleged victim: The author

State party: France

Date of communication: 9 January 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 1991,

Adopts the following:

Decision on admissibility*

1. The author of the communication, dated 9 January 1989, is G.B., a French citizen born in 1964 and a resident of Rennes, France. She claims to be a victim of a violation by France of articles 2, paragraphs 1 to 3, 19, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author was arrested during the night of 7/8 August 1987 on charges of having defaced a number of road signs in the Département d'Ile-et-Vilaine. Her action, she states, was part of a campaign led by the movement "Stourm ar Brezhoneg" (Fight for the Breton Language), whose aim is the posting of bilingual road signs, in French and Breton, throughout Brittany.

2.2 In December 1987, the Tribunal de Grande Instance of Rennes fined the author 5,000 French francs and sentenced her to a term of four months of imprisonment (suspended); at the same time, she and the two codefendants, Hervé Barzhig a/ and S.G., b/ were sentenced to pay 53,000 French francs, with interest, for the damage caused. G.B. states that the tribunal refused to accept the testimony of the defendants in Breton. On 4 July 1988, the Court of Appeal of Rennes confirmed the judgement of the court of first instance.

2.3 The author indicates that none of the above sentences has been the subject of an amnesty, as has been the case with respect to other, similar offences. The suspended prison sentence is, in her opinion, merely intended to prevent her from entering the civil service.

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* An individual opinion submitted by Mrs. Rosalyn Higgins is appended.

Complaint

3. It is alleged that the facts described above constitute violations by France of articles 2, paragraphs 1-3, 19, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

State party's observations

4.1 The State party contends that the communication is inadmissible on a number of grounds. As to the requirement of exhaustion of domestic remedies, it notes that the author failed to appeal the judgement of 4 July 1988 of the Court of Appeal of Rennes to the Court of Cassation. The State party further specifies that the author did not, at any stage in the judicial proceedings, request to be heard in Breton, and that she expressed herself without problem in French.

4.2 As to the alleged violation of article 2 of the Covenant, the State party notes that this provision cannot be violated directly and in isolation. A violation of article 2 can be admitted only to the extent that other rights protected under the Covenant have been violated (para. 1) or if necessary steps to give effects to rights protected under the Covenant have not been taken. A violation of article 2 can only be the corollary of another violation of a Covenant right. The State party adds that the author did not precisely spell out her allegations and that, in any event, she did not avail herself of available domestic remedies.

4.3 The State party rejects the claim of a violation of the author's rights under article 19, paragraph 2, as an abuse of the right of submission. Apart from having failed properly to substantiate her allegation, the State party notes that G.B. was not prevented, at any stage of the proceedings, from freely expressing herself. Defacing road signs cannot, by any reckoning, be construed as a manifestation of the freedom of expression, within the meaning of article 19, paragraph 2.

4.4 As to the alleged violations of articles 25 and 26, the State party contends that the author has failed to substantiate, for purposes of admissibility, how she considers her rights under these provisions to have been violated. While a criminal conviction may bar access to public office, G.B. at no time indicated that she intended to seek access to public office; nor did she file a request, pursuant to article 55, paragraph 1, of the Penal Code, for non-inscription of her criminal conviction in her files (casier judiciaire).

4.5 Finally, the State party recalls that upon ratification of the Covenant, the French Government entered the following declaration in respect of article 27: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned."

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has considered the material placed before it by the parties. As to the claims under articles 19, paragraph 2, 25 and 26 of the Covenant, it considers that G.B. has failed to substantiate, for purposes of admissibility, how she was denied her freedom of expression (art. 19, para. 2) and access to public service (art. 25), or how she was discriminated against on the ground of her language (art. 26). The Committee observes that the defacing of road signs does not raise any issues under article 19 and notes that the material before it shows that G.B. was perfectly capable of expressing herself in French, a language she did not claim not to understand, and freely chose to do so; there is no evidence that the sentence pronounced by the Tribunal de Grande Instance of Rennes was intended to prevent her from becoming a civil servant.

5.3 As to the claim of a violation of article 27, the Committee reiterates that France's "declaration" made in respect of this provision is tantamount to a reservation and therefore precludes the Committee from considering complaints against France alleging violations of article 27 of the Covenant. c/

5.4 The author has also invoked article 2 of the Covenant. The Committee recalls that article 2 is a general undertaking by States parties and cannot be invoked, in isolation, by individuals under the Optional Protocol. d/ Since the author's claims relating to articles 19, 25 and 26 of the Covenant are inadmissible pursuant to article 2 of the Optional Protocol, it follows that she cannot invoke a violation of article 2 of the Covenant.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), annex XI, sect. F, views adopted on 11 April 1991.

b/ See sect. F above.

c/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. A and appendices I and II, communication No. 220/1987, decision of 8 November 1989.

d/ See ibid., annex X, sect. I, communication No. 268/1987, decision of 3 November 1989.

Appendix

Individual opinion of Mrs. Rosalyn Higgins pursuant to rule 92, paragraph 3, of the Committee's rules of procedure concerning communication No. 348/1989 (G.B. v. France)

Taking the view already expressed in respect of communications Nos. 220/1987 and 222/1987 [a] that the French "declaration" on article 27 is not properly to be interpreted as a reservation, I am unable to agree with the provisions of paragraph 5.3 of the decision, that the Committee is precluded from considering complaints against France alleging a violation of article 27 of the Covenant.

However, the facts of the case reveal to me no substantiation of a claim under article 27, and I therefore also reach the conclusion that there are no grounds for admissibility.

Rosalyn HIGGINS

Notes

[a] See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. A, appendix II, and sect. B, appendix II.

H. Communication No. 351/1989, N.A.J. v. Jamaica (decision of 6 April 1992, adopted at the forty-fourth session)

Submitted by: N.A.J. (name deleted)

Alleged victim: The author

State party: Jamaica

Date of communication: 3 February 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 6 April 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 3 February 1989) is N.A.J., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his human rights by Jamaica. He is represented by counsel. Although neither author nor counsel invoke specific provisions of the International Covenant on Civil and Political Rights, it appears from the submissions that they invoke a violation of article 14 of the Covenant.

Facts as submitted by the author

2.1 The author states that he was charged with the murder of A.Y., but claims to be innocent. On the evening of 19 January 1983, he was at the locus in quo where he saw the deceased with two other persons, one Co. and Ch., the deceased's brother. Co. and the deceased were holding guns; Co. was hitting Ch. with his gun, and when the author approached them, he was told not to interfere. Walking away from the scene of the fight, he heard gunshots and began running. A.Y. was taken to the hospital, where he died of gunshot wounds on 21 January 1983.

2.2 On 3 November 1983, the Home Circuit Court in Kingston found the author guilty of murder and sentenced him to death. The Jamaican Court of Appeal dismissed his appeal on 20 June 1985. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 25 January 1988.

2.3 During the trial, the prosecution's main witness, Ms. P.M., girlfriend of the deceased and the only eyewitness to the crime, testified that A.Y. was shot in the back. The pathologist, however, opined that the entry wound was to the right of the abdomen, two inches from the midline of the body.

2.4 The Court of Appeal addressed the issue of the apparent inconsistency in the evidence, stating, inter alia, that: "it was open to the jury to accept as a reasonable explanation Ms. P.M. concluding that a wound on the deceased's back meant that he was shot from the back when the wound was an exit wound, and the high probability that the deceased turned around to look when the firing started behind him."

Complaint

3.1 The author claims that his trial was unfair and that a number of irregularities occurred in its course. He alleges gross misconduct on the part of the trial judge, who purportedly misdirected the jury by failing to explain to it the discrepancy between the testimony of Ms. P.M. and the evidence of the pathologist. He also submits that the trial judge sent further directions to the jurors while they were deliberating, which may have caused additional pressure on them and influenced their verdict.

3.2 The author finally contends that the trial judge erred in permitting author's counsel to make his final address to the jury before Crown counsel made hers. In this connection, it is submitted that Crown counsel should have been required by the trial judge to make her final address to the jury first, so as to avoid emphasizing the Crown's case to the jury immediately prior to the summing-up.

State party's observations

4. By submission of 21 July 1989, the State party argues that the communication is inadmissible on the ground of failure to exhaust all available domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol. It submits that the author's appeal to the Judicial Committee of the Privy Council was in respect of his criminal case, and that he still has constitutional remedies that he may pursue. The State party further submits that the communication does not disclose a violation of any of the rights set forth in the Covenant.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has taken notice of the State party's contention that the author still has constitutional remedies he may pursue. The Committee observes, however, that the author's claims relate primarily to the conduct of the trial, the judge's instructions to the jury, and evaluation of evidence by the court. It recalls that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence in a particular case. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations do not show that the judge's instructions or conduct of the trial suffered from such defects. In this respect, therefore, the author's claims do not come within the competence of the Committee. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

I. Communication No. 358/1989, R.L. et al. v. Canada (decision of 5 November 1991, adopted at the forty-third session)

Submitted by: R.L. et al. (names deleted)

Alleged victims: The authors

State party: Canada

Date of communication: 1 April 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 5 November 1991,

Adopts the following:

Decision on admissibility

1. The authors of the communication (initial submission dated 1 April 1989 and subsequent correspondence) are Chief R.L., M.B., M.H. and 14 other members of the Whispering Pines Indian Band, residing in the province of British Columbia, Canada. The authors allege violations by the Government of Canada of article 1, paragraph 1, article 2, paragraph 1, and articles 17, 22, 23, 26 and 27 of the International Covenant on Civil and Political Rights. They are represented by counsel.

Facts as submitted by the authors

2.1 The Whispering Pines Indian Band belongs to the Shuswap Nation in south-central British Columbia. The Shuswap are the indigenous people of the region and constitute a single social, cultural, political and linguistic community distinct both from Euro-Canadians and from neighbouring indigenous peoples. Approximately half of the contemporary members of the Band live in a small farming community numbering about 26 persons and engage in raising cattle on 1,200 acres (750 ha) of land.

2.2 The communication challenges certain aspects of Bill C-31, i.e. the legislation which was enacted by the Government of Canada in 1985 in response to the recommendations of the Human Rights Committee in its Views in the case of Sandra Lovelace v. Canada. a/ By virtue of Bill C-31 certain persons formerly deprived of "Indian" status on the basis of sex were reinstated, but at the same time, other persons who formerly enjoyed Indian status were deprived of it on the basis of a racial quota.

2.3 Owing to the small size of the Band, members frequently marry non-members. Because of its geographical isolation from other Shuswap communities and in view of the relative proximity to the city of Kamloops, social contact and intermarriage with non-Indians has been common. Traditional Indian membership rules allowed for considerable flexibility and facilitated the incorporation of non-members into the various bands. Problems allegedly started with the enactment of the original Indian Act, 1876, which imposed the Euro-Canadian concept of patrilineal kinship and inheritance on the indigenouos peoples of Canada. To be considered an "Indian" under the Indian Act, a person had to be the biological child of an Indian father, or have been adopted by an Indian father in accordance with Canadian family law. The Indian Act also provided that women would take their legal status from their husbands. A Shuswap woman who married a non-Indian Canadian continued to belong to her childhood band under Shuswap law, but became "White" under the Indian Act. Likewise, although a "White" Canadian woman who married a Shuswap became a member of her husband's band under the Indian Act, she was never regarded as Shuswap by her husband's band. As a result of the original Indian Act, Shuswap women who married non-Indians were removed from "band lists" maintained by the Government of Canada, thereby losing their rights to live on lands set aside for Shuswap bands ("Indian reserves"). In 1951 the Indian Act was amended to the extent that minor Indian children would also lose their status if their mother married a non-Indian; bands could, however, apply for an exemption from this rule. Other Shuswaps lost their Indian status upon obtaining off-reserve employment, serving in the Canadian armed forces, or completing higher education. The authors conclude that it was Government policy to remove from Indian reserves anyone deemed capable of assimilating into non-Indian Canadian society.

2.4 By virtue of Bill C-31 women who, on account of their marriage to non-Indians prior to 17 April 1985, had lost their Indian status under the former Indian Act, together with any of their children who had lost status with them, could be reinstated and thus be reconsidered band members. In addition, Bill C-31 authorized the reinstatement of men or women who were deprived of their status before 1951 for other reasons. The children of such persons, however, were added to a band list only if both partents were Indians or were entitled to be registered as Indians. Children born before 17 April 1985, merely required the child's father (or, if the parents were unmarried, mother) to have Indian status.

2.5 Bill C-31 provides that a band "may assume control of its own membership if it establishes membership rules for itself in writing". It is submitted, however, that few bands were able to obtain approval of their own rules before 28 June 1987, the deadline established by Bill C-31. The net effect has been that persons who left the reserves before 1985, together with most of their children, have been reinstated upon request, and that all children born out of interracial marriages after 1985 have been, or will be, deleted from band lists.

Complaint

3.1 The authors submit that two aspects of Bill C-31 affect them adversely: bringing in new band members whom the community cannot house or support, and imposing new standards for Indian status which will operate to deprive many of the authors' children and grandchildren of their Band membership and right to live on the reserve. The net result on the Band is a gain of nine persons, in terms of Indian status, and a loss of two. In addition, since the Band's proposed membership rules were not approved by the Minister before 28 June 1987, all persons acquiring the legal status of Indians are entitled to band membership. Another problem arises with respect to children born after 17 April 1985, since they may acquire such status only if they have two Indian parents. The continued application of Bill C-31 will have an increasingly negative effect on the authors' families if their children marry non-Indians in the same proportions as their parents. To avoid the termination of family lines through the operation of section 6(2) of Bill C-31, the authors would have to arrange all future marriages of band members with members of other Bands. This is said to force them to choose between gradually losing their legal rights and their reserve land, and depriving their children of personal freedom and privacy, which would be incompatible with the Covenant and the Canadian Charter of Rights and Freedoms.

3.2 Another current problem is that 28 persons who are not directly related to the families now residing on the reserve have applied for Indian status and Band membership. This would entail a 50 per cent increase in housing requirements, which the Band cannot meet. So as to accommodate new members, the Band would have to develop a cluster-housing project requiring new water wells, sewer systems and power lines, at an estimated cost of 223,000 Canadian dollars. Federal adjustment assistance under Bill C-31 is, however, extremely limited. Even if new members could be housed on the reserve, there is very little possibility of ensuring their employment. Cultural problems also arise, because some of the newcomers have never lived on an Indian reserve and others have lived off-reserve for more than 10 years. Considering that most are single, older adults without children, their social impact on a community, which has consisted of three to four self-sufficient farm families, would be overwhelming.

3.3 The authors believe that the Committee's views in the Lovelace case confirm that States cannot unreasonably restrict freedom of association and cohabitation of individual families, nor of the related families which comprise an ethnic, religious or linguistic community. The authors consider that their "freedom of association with others " (art. 22, para. 1) has been interfered with, in that they cannot themselves determine membership in their small farming community. They can be forced to share their limited land and resources with persons who acquire Indian status and membership, while their own direct descendants may lose the right to be part of the community.

3.4 It is submitted that the implementation of Bill C-31 constitutes "arbitrary and unlawful interference" with the authors' families (art. 17, para. 1), on account of the fact that the Government, and not the Band, determines who may live on the reserve. Moreover, this interference is said to be arbitrary in that it distinguishes among family members on the basis of whether they were born before or after 17 April 1985, and in that it distinguishes among family members on the basis of whether one or both of their parents were Indians, a purely racial criterion contrary to articles 2, paragraph 1, and 26 of the Covenant.

3.5 The implementation of Bill C-31 allegedly conflicts with article 23 of the Covenant, in that it restricts the freedom of Band members to choose their own spouses, particularly considering that marriage to non-Indians would result in disenfranchising the children.

3.6 Further, the authors claim a violation of article 26 of the Covenant, which prohibits "any discrimination" on the ground of race, in that it makes racial quantum, rather than cultural factors and individual allegiance, the basis for allocating indigenous rights and indigenous peoples' lands. Traditional Shuswap law regarded as Shuswap anyone who was born in the territory or raised as a Shuswap. Bill C-31 requires that, in the future, both parents be "Indian" as defined under Canadian law. Children born to a Shuswap mother or father and raised on Shuswap territory in the Shuswap culture would still be denied Indian status and Band membership.

3.7 Concerning article 27 of the Covenant, the authors point out that they regard themselves as an indigenous people rather than an "ethnic (or) linguistic minority", but that since the indigenous and minority categories overlap, indigenous peoples should also be entitled to exercise the rights of minorities. They conclude that Bill C-31 violates article 27 by imposing restrictions on who can reside in, or share in the economic and political life of the community.

3.8 The Shuswap consider themselves a distinct people and thus entitled to determine the form and membership of their own economic, social and political institutions, in accordance with article 1, paragraph 1, of the Covenant. Control of membership being one of the inherent and fundamental rights of indigenous communities, the authors invoke article 24 of the draft Universal Declaration of Indigenous Rights.

3.9 As to the requirement of exhaustion of domestic remedies, the authors state that they endeavoured to counter the detrimental effects of Bill C-31 by attempting to assume control of Band membership. On 23 June 1987 they adopted rules which were duly transmitted to the Ministry of Indian Affairs. On 25 January 1988, the Minister replied that the proposed rules were inconsistent with Bill C-31, in that they excluded certain classes of persons eligible for reinstatement. In this connection the authors invoke section 35 of the Constitution Act, 1982, which was intended to secure "aboriginal and treaty rights of the aboriginal peoples of Canada" against future legislative erosion. The authors admit that, in theory, the Supreme Court of Canada could determine that Bill C-31 is of no effect if it is found to conflict with the authors' "aboriginal rights". But they claim that it would take several years of litigation to settle the issue at a financial cost considerably beyond the means of three farm families. According to the authors, an attempt to solve the matter by appeals to the Canadian courts would entail "unreasonably prolonged" proceedings in the sense of article 5, paragraph 2 (b), of the Optional Protocol. Moreover, once the legal issue is determined by the Supreme Court, it would be too late to reverse the effects on the community of losing some of its members and accommodating others under Bill C-31. Therefore, the authors seek immediate measures to preserve the *status quo pendente lite* and request the Committee, purusant to rule 86 of the rules of procedure, to urge the State party to refrain from making any additions to or deletions from the band list of the Whispering Pines Indian Band, except as may be necessary to ensure that every direct descendant of the authors is included for the time being as a member of the Band.

State party's observations and authors' comments

4.1 The State party contends that the communication is inadmissible *ratione personae*, purusant to article 1 of the Optional Protocol. It notes that the authors contend that Bill C-31 threatens to deprive their descendants of Indian status, and observes that the victims of such a claim would be children born after 1985, of one parent who is non-Indian and another parent who alone cannot pass on Indian status (i.e. a child out of a marriage between a status

Indian and a non-status Indian, who marries a non-status Indian). In the State party's opinion, the authors have not shown that there are in the Band individuals meeting these criteria and who therefore could claim to be victims. The State party further contends that the Committee itself has repeatedly acknowledged that it will not entertain claims of abstract or potential breaches of the Covenant; it adds that the communication does not identify anyone currently affected by Bill C-31, and that the communication is inadmissible on that ground.

4.2 The State party submits that the authors have not complied with their obligation to exhaust domestic remedies. It emphasized that article 5, paragraph 2 (b), of the Optional Protocol reflects a fundamental principle of general international law that local remedies be exhausted before resorting to an international instance. This rule ensures that domestic courts are not superseded by an international organ, and that a State has an opportunity to correct any wrong which may be shown before its internal forums, before that State's international responsibility is engaged. Domestic courts are generally better placed to determine the facts of and the law applicable to any given case, and where necessary, to enforce an appropriate remedy. In the present case, mere doubts about the success of remedies does not absolve the authors from resorting to them, a principle recognized by the Committee in its decisions in cases R.T. v. France (communication No. 262/1987) b/ and S.S. v. Norway (communication No. 79/1980). c/

4.3 With regard to the alleged prohibitive cost of, and length of time for exhausting domestic remedies, the State party refers to the Committee's decisions in J.R.C. v. Costa Rica (communication No. 296/1988) d/ and S.H.B. v. Canada (communication No. 192/1985) e/ where, in similar circumstances, the communications were declared inadmissible.

4.4 Moreover, the State party points out that the judicial remedies remain available to the authors: thus, it remains open to them to apply to the Federal Court, Trial Division, for a declaration that "aboriginal rights" include control over the Band's own membership. The State party notes that the recent judgement of the Supreme Court of Canada in the case of R. v. Sparrow clarifies both meaning and scope of the "aboriginal rights" referred to in section 35 of the Constitution Act, 1982; in this case, it was held that the Government must meet exacting standards before implementating actions that impinge upon the enjoyment of existing aboriginal and treaty rights. The State party submits that this judgement underlines the importance of first allowing local courts to address national issues.

4.5 Further, it is open to the authors to file an action in the same court, based on breach(es) of the Canadian Charter of Rights and Freedoms. Among the rights guaranteed in the Charter are the right to freedom of association (sect. 2 (d)), the right not to be deprived of life, liberty or security of the person except in accordance with principles of fundamental justice (sect. 7), and the right to equality "before and under the law and ... the right to equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability" (sect. 15). These rights are guaranteed to individuals in relation to federal and provincial government (sect. 32). Anyone whose charter rights have been infringed may apply to a competent court jurisdiction to obtain such remedy as the court considers appropriate and just within the circumstances (sect. 24).

4.6 The State party notes that the two avenues of recourse described above have been tried by a number of Indian bands. In Twinn v. R., members of six Alberta Indian Bands applied to the Federal Court, Trial Division, for a declaration: (a) that Bill C-31 is inconsistent with section 35 of the Constitution Act, 1982, to the extent that it limits, or denies, the aboriginal and implied treaty rights of Indian bands to determine their own membership; or (b) that the imposition of additional members on the plantiff bands pursuant to the Bill, without the bands' consent, constitutes a violation of the right to freedom of association, guaranteed by section 2(d) of the Charter. Evidence-gathering examinations were initiated early in 1989, but because of several interlocutory motions and the large number of parties seeking to intervene, they have not been completed. The State party expresses its hope that the matter will go on trial late in 1991. Similar issues have been raised in the cases of Martel v. Chief Omeasoo before the Federal Court, Trial Division, and of Chief Omeasoo v. The Queen before the Federal Court, Appeals Division; the State party indicates, however, that the plaintiffs in these cases are not currently actively pursuing their actions.

4.7 In respect of allegedly prohibitive costs of litigation, the State party argues that the Department of Indian Affairs and Northern Development has provided funding to various of the parties involved in the cases discussed above. In Twinn, approximately $55,000 was given to the Native Council of Canada and Indian Rights for Indian Women, to assist in the preparation of court documentation. In September 1988, the Government approved a Bill C-31 Litigation Funding Program. Since funds have already been granted to certain litigants in the Twinn case pursuant to this programme, it is, however, unlikely that further funds will be made available for the litigation of identical issues between different parties, at least until the Twinn case is resolved. The State also contends that the authors may seek financial assistance through the Court Challenges Program, which was established in 1985 to assist litigants in cases involving important and novel issues relating to the applicability of the Charter's equality clause to federal laws. The State party notes that there is no indication whether the authors have sought financial assistance under this programme from its independent administering body. Finally, the State party refers to the existence of a Test Case Funding Program, but observes that there is no indication that the authors applied for assistance under it.

4.8 Bill C-31 also allows Indian bands to determine their own membership rules if two conditions are met. These conditions are that the rules be approved by a majority of band electors and that certain specified groups of persons be included in the membership list.

4.9 In 1987 the authors submitted their membership rules for approval to the Department of Indian Affairs and Northern Development. By letter dated 25 January 1988, the Chief of the Whispering Pines Band was advised that the membership rules were not acceptable because they excluded certain specified groups, such as women who lost their entitlement to Band membership as a result of marriage to non-Indians, their minor children and others. The Minister invited the Band to amend its membership rules in accordance with the preconditions, and resubmit the amended rules for approval by the Department. The two-year deadline to which the Band refers does not apply to resubmission of proposed rules. Therefore, the Minister's offer to the Band remains valid and would provide a remedy to the alleged violations of the Covenant.

5.1 In response to the State party's submission, the authors assert that, since the complaint arises directly from the State party's efforts to implement a previous decision of the Committee involving the same State, the same category of persons and the same basic principles, it constitutes a case of "continuing jurisdiction". They invoke the principles of natural justice, that the author of a communication may return to the Committee for a clarification and reaffirmation of its views without first having to relitigate the matter before domestic tribunals. The authors believe that not only the author of a communication could seek further action following the transmittal of the Committee's views, but also other individuals, similarly placed and similarly affected, should be entitled to address the Committee for clarifications of the application of its views to them.

5.2 The authors argue that the Committee's views were not properly implemented, as Bill C-31 merely replaced gender restrictions by racial ones and that it would be unreasonably formalistic to require prior exhaustion of domestic remedies in these circumstances.

5.3 In respect of the availability of domestic remedies, the authors reiterate their view that litigation would not afford them an "effective and available" remedy and that the cost and time required for judicial resolution would not be reasonable under the circumstances. They also claim irreparable harm as pendente lite there would be no protection for children not registered as Indians or as members of the Band. Finally, the authors reiterate that a constitutional challenge could take at least four and one half years, a period the Committee deemed unreasonably prolonged within the meaning of article 5, paragraph 2 (b), of the Optional Protocol on previous occasions. [f/]

5.4 The authors further contend that they have been offered neither financial nor legal assistance. Funding remains entirely at the discretion of the Minister for Indian Affairs and Northern Development, and none of the Government's comments suggest that legal assistance would be forthcoming if the current complaint were to be dismissed.

5.5 In respect of revising and resubmitting their Band bylaws to the competent Minister, the authors underline that bylaws cannot override the provisions of Bill C-31, including the racial standards they have challenged. The Minister cannot approve bylaws which conflict with statutory norms.

5.6 In another submission, dated 3 October 1990, the authors explain that they have not applied for financial assistance from the Department of Justice, since they were advised that there is little hope of success and that this assistance is ordinarily available only for appeals, rather than for the preparation for trial and initial complaints. In addition, the authors have ascertained that in other domestic litigation concerning rights of indigenous peoples, no judicial decisions have been handed down. In particular the Twinn case is not expected to go to trial before 1991.

5.7 Authors' counsel indicates that there are presently six adults in the Whispering Pines Band with so-called "6(2)" status under Bill C-31 - i.e. adults who, if marrying a non-status Indian, cannot pass on Indian status to their children. None of these children can be registered under Bill C-31. The consequences for the others depend on whom they will marry; in view of the small size of the Band, counsel notes that it is unlikely that they will marry anyone with status under Bill C-31. Thus, the children of P.E. and V.E. will be ineligible to become Band members since P.E. and V.E. married non-Indians; counsel adds that it is unlikely that any of the future children of other registered Band members will be eligible. This situation, it is submitted, does not involve hypothetical and future violations of the Covenant: some of the Band's children will grow up in the knowledge that they can protect their cultural heritage only if they marry an Indian registered under Bill C-31. The Bill is thus said to constitute an infringement on the right to marry even in circumstances where no individualized child has as of yet been disenfranchised.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 With respect to the authors' claim of a violation of article 1 of the Covenant, the Committee recalls its constant jurisprudence that pursuant to article 1 of the Optional Protocol, it may receive and consider communications only if they emanate from individuals who claim that their individual rights have been violated by a State party to the Optional Protocol. While all people have the right to self-determination and the right freely to determine their political status, pursue their economic, social and cultural development (and may, for their own ends, freely dispose of their natural wealth and resources) the Committee has already decided that no claim for self-determination may be brought under the Optional Protocol. g/ Thus, this aspect of the communication is inadmissible under article 1 of the Optional Protocol.

6.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has noted the authors' arguments that they have unsuccessfully endeavoured to challenge Bill C-31 by attempting to assume control of Band membership. It observes, however, that the authors themselves concede that the Supreme Court of Canada could rule Bill C-31 to have no effect where it conflicts with the authors' "aboriginal rights", i.e. the desired control of Band membership.

6.4 The Committee further observes that other Indian bands have instituted proceedings before the Federal Courts, the outcome of which is pending, notably in the case of Twinn v. R., and that the alleged high cost of litigation can, under specific circumstances, be offset by funding provided pursuant to a number of programmes instituted by the State party. As to the authors' concern about the potential length of proceedings, the Committee reiterates its constant jurisprudence that fears about the length of proceedings do not absolve authors from the requirement of at least making a reasonable effort to exhaust domestic remedies (A. and S.N. v. Norway). h/ In this light, the Committee finds that available domestic remedies that may indeed prove to be effective remain to be exhausted.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 1 of the Optional Protocol in so far as it concerns the right of self-determination and under article 5, paragraph 2 (b), of the Optional Protocol in so far as it concerns the authors' other allegations;

(b) That this decision shall be transmitted to the State party, to the authors and to their counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ Communication No. 24/1977; see Selected Decisions of the Human Rights Committee, vol. I, pp. 83 *et seq*. See also the statement by the Government of Canada concerning the implementation of the views in the case of Lovelace, in ibid., Selected Decisions, vol. II, pp. 224 *et seq*.

b/ Declared inadmissible at the Committee's thirty-fifth session. See Selected Decisions, vol. II.

c/ Declared inadmissible at the Committee's fifteenth session. See Selected Decisions, vol. I.

d/ Declared inadmissible at the Committee's thirty-fifth session. See Selected Decisions, vol. II.

e/ See ibid., Forty-second Session, Supplement No. 40 (A/42/40), annex IX, sect A.

f/ Weinberger Weisz v. Uruguay (communication No. 28/1978, in Selected Decisions of the Human Rights Committee, United Nations publication (Sales No. E.89.XIV.1.), vol. I, pp. 57 *et seq*.

g/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex IX, sect. A, communication No. 167/1984, views adopted on 26 March 1990, para. 32.1; and ibid., Forty-sixth Session, Supplement No. 40 (A/46/40), annex XII, sect. O, communication No. 413/1990, decision of 2 November 1990, para. 3.2.

h/ See ibid., Forty-third session, Supplement No. 40 (A/43/40), annex VIII, sect. C, communication No. 224/1987, decision adopted on 11 July 1988, para. 6.2.

J. Communication No. 363/1989, R.L.M. v. France (decision of 6 April 1992, adopted at the forty-fourth session)

Submitted by: R.L.M. (name deleted)

Alleged victim: The author

State party: France

Date of communication: 11 May 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 6 April 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is R.L.M., a French citizen born in 1946 and a teacher by profession, currently residing at Nantes, France. He claims to be a victim of violations by France of articles 2, 19, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 Since 1968, the author has been teaching in various schools in the district of the Academy of Nantes (*Académie de Nantes*); since 1977 he has been teaching Breton, history and geography in private schools, which provide education in accordance with a contract with the Ministry of Education. Since 1980, the teaching of Breton has been part of his official timetable.

2.2 In the author's opinion, the Rectorate of the Academy of Nantes (*Rectorat de l'Académie de Nantes*) has systematically discouraged and obstructed the teaching of Breton. This obstruction is characterized, *inter alia*, by:

(a) The systematic denial to candidates to the *Baccalauréat* examinations of the possibility to sit exams in the centres usually provided for that purpose;

(b) The refusal to inform the students or their parents about the possibilities, laid down in specific regulations, of studying the Breton language in secondary schools in Nantes and in the Département de Loire-Atlantique;

(c) The refusal to create a tenured post for the teaching of Breton, on the ground that the limited demand for teaching of Breton does not justify the establishment of such a post;

(d) The refusal to initiate an official and objective inquiry into the matter.

2.3 The author explains that teachers wishing to obtain in Breton the Certificate of Aptitude for Secondary Education (Certificat d'Aptitude Professionnelle d'Enseignement Secondaire (CAPES)) must also choose a second subject. He adds that the text of the applicable regulations of 1983, governing the aims of the teaching of regional cultures and languages, are not applicable to those teachers who have obtained the CAPES for Breton; they do not have to volunteer to teach Breton, once there is some demand for it, but have certain acquired rights to teach their subject.

2.4 The author contends that he cannot submit his grievances to the French courts or administrative tribunals. He surmises that there is no effective remedy in his case because, as a civil servant, his teaching obligations are subordinate to the "exigencies of the service", which may require the teaching of subjects that do not correspond to the specialization of the complainant. It is therefore said to be futile to challenge the decisions of the authorities. Finally, he submits that the administrative authorities regularly deny him the opportunity of a meeting, presumably so as to avoid having to address the problem.

Complaint

3.1 The author contends that the Rectorate of the Academy of Nantes (and the Academy of Rennes) has systematically discriminated against him, both by obstructing his career development and by lowering his salary, allegedly without any explanation. He further claims that a course of Breton that he had been assigned to teach at the Lycée de Vannes has been systematically hindered by the Board of that high school, and that the educational authorities, including the Ministry of Education, have endorsed the discriminatory attitude of their subordinates against the author and against the teaching of Breton in general.

3.2 More generally, the author contends that the requirement of being able to teach two subjects for the award of the Certificate of Aptitude for the teaching of Breton has, in reality, the effect of seriously curtailing the possibilities of teaching Breton. Thus, a course given during the school year 1988/89 at the Collège Montaigne in Vannes could not be organized for the following school year, despite demand from students. This, it is submitted, is contrary to article 55 of the French Constitution and has been recognized in a judgement given by the Administrative Tribunal of Rennes on 27 January 1987.

3.3 Finally, the author submits that the result of a recent survey conducted by the Parents' Association for the Teaching of Breton (Association des Parents d'Elèves pour l'Enseignement du Breton) confirms the discriminatory attitude of the Rectorate of the Academy of Nantes, since it challenges the Rector's opinion that the limited demand for the teaching of Breton does not justify the creation of established posts.

State party's information and observations

4.1 The State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. Subsidiarily, it contends that many of the author's complaints concern alleged discrimination *vis-à-vis* the Breton language in general, and that, accordingly, the author cannot be deemed a victim within the meaning of article 1 of the Optional Protocol.

4.2 In respect of the allegedly discriminatory measures directly concerning the author, the State party argues that R.L.M. has failed to exhaust available remedies. His two letters addressed to the Rector of the Academy of Rennes in February 1988 and to the Rector of the Academy of Nantes in April 1988 do not display any of the characteristics of an administrative remedy. In fact, the author merely sought, through these letters, an audience with a view to securing the establishment of a post for the teaching of Breton, and did not complain about his personal situation.

4.3 The State party contends that the following remedies would be open to the author, adding that none of them has been utilized:

(a) Recourse to the representatives of his profession in the "administrative (parity) commission" (Commission administrative paritaire), which may be seized of all types of questions concerning personnel disputes (article 25 (4)) of Decree 82-451 of 28 May 1982 concerning the Commission administrative paritaire);

(b) Filing of an *ex gratia* appeal to a higher administrative authority, including the Minister of Education. The advantage of such an appeal, while optional, is that it may be based not only on the legally relevant facts of the case but also on considerations of equity and expediency;

(c) Finally, if the author considered that any of the contested decisions violated his rights, he could have sought a contentious remedy for abuse of power, requesting the administrative judge to annul the decision. Such an application could have been filed within two months of the date on which he was notified of any adverse decision affecting him.

4.4 The State party emphasizes that the inactivity or negligence of the author in respect of pursuit of domestic remedies cannot be attributed to State organs: "the right to submit a communication to the Human Rights Committee cannot be used as a substitute for the normal exercise of domestic remedies in cases where such remedies have not been pursued purely through the fault of the interested party."

4.5 Additionally, the State party submits that the author has failed to advance a claim in the sense of the Optional Protocol. As to the alleged violation of article 19, paragraph 2, the State party contends that the author has failed to show how his freedom of expression might have been interfered with and that, on the contrary, each of his submissions and his correspondence with the education authorities, parliamentarians and government officials show that he had ample opportunity to make his position known. It further affirms that "freedom of expression" within the meaning of article 19 cannot be construed as including a right to exercise a specific teaching activity.

4.6 With respect to the alleged violation of article 26, the State party affirms that nothing in the file substantiates the author's claim that the Rectorate of the Academy of Nantes systematically discriminates *vis-à-vis* the teaching of Breton and that it discriminated against the author by denying him regular career development. It notes that Law 51-46 of 11 January 1951 recognized Breton as a regional language and contained measures designed to encourage its teaching. This law was amended by circular No. 82-261 of 21 June 1982 concerning the teaching of regional languages and cultures in public education institutions, and by circular No. 83-547 of 30 December 1983 specifying objectives. The teaching of Breton, however, is not obligatory but a function of the optional choices of students and teachers. The Rectors of the various academies may adapt teaching requirements in the light of local characteristics and with a view to the financial resources available to them.

4.7 With respect to the author's allegation that his CAPES forces him to teach subjects other than Breton, the State party explains that all teachers who obtain CAPES may be called upon to teach in any of the academies created by the Minister of Education throughout France. The specificity of teaching requirements of Breton therefore has led the authorities to require candidates to CAPES to acquire the certificate for two subjects. Teachers of Breton are required to teach a second subject in addition to the hours of Breton taught, so as to fulfil the necessary service requirements laid down in their statute. The State party concludes that the author cannot pretend that he is discriminated on grounds of language if the Lycée de Vannes asked him to teach geography and history, in addition to Breton; if Breton classes are not organized, this is by no means owing to discriminatory considerations but to the fact that this option is chosen by too limited a number of students, and, in the author's case, norms that are of general application simply have been applied to his situation.

4.8 With respect to the alleged violation of article 27, the State party refers to the "declaration" made by the Government of France upon accession to the Covenant, which stipulates: "in the light of article 2 of the Constitution of the French Republic, ... article 27 [of the Covenant] is not applicable as far as the Republic is concerned".

4.9 Finally, the State party contends that a violation of article 2 of the Covenant cannot be committed directly and in isolation, and that any violation of this provision can only be a corollary to the violation of another provision of the Covenant. Since the author has not shown that his rights under the Covenant have been breached, he cannot invoke article 2.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 Concerning the author's claim under article 19, paragraph 2, the Committee observes that R.L.M. has failed to substantiate how his freedom of expression was violated by the French authorities' policy *vis-à-vis* the teaching of Breton. In this respect, therefore, he has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

5.3 As to the claim of a violation of article 27, the Committee reiterates that France's "declaration" made in respect of this provision is tantamount to a reservation and therefore precludes the Committee from considering complaints against France alleging violations of article 27 of the Covenant. [a]

5.4 With regard to the alleged violation of article 26, the Committee observes that although the author has claimed that effective remedies are lacking, it is clear from his submissions that he has not pursued any judicial or administrative remedies in this respect. His submissions to the competent authorities and his correspondence with the Rectorate of the Academy of Nantes and Rennes cannot be deemed as exhaustion of available administrative and judicial remedies. The Committee reiterates that article 5, paragraph 2 (b), of the Optional Protocol, by referring to "all available domestic remedies", clearly refers in the first place to judicial remedies. b/ The author has not shown that he could not have resorted to the administrative and judicial procedures which the State party has plausibly submitted were available to him, or that their pursuit could be deemed to be, a priori, futile. In fact, it appears from the author's submissions that he does not envisage availing himself of these remedies. The Committee finds that his doubts about the availability and effectiveness of domestic remedies do not absolve him from exhausting them, and concludes that the requirements of article 5, paragraph 2 (b), have not been met.

5.5 The author has also invoked article 2 of the Covenant. The Committee recalls that article 2 is a general undertaking by States parties and cannot be invoked, in isolation, by individuals under the Optional Protocol. c/ As the author's claims relating to articles 19 and 26 are inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol, it follows that R.L.M. cannot invoke a violation of article 2 of the Covenant.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision shall be communicated to the State party and the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. A, communication No. 220/1987 (T.K. v. France), decision of 8 November 1990, para. 8.6 and appendices I and II.

b/ See ibid., Forty-fourth Session, Supplement No. 40 (A/44/40), annex XI, sect. D, communication No. 262/1987 (R.T. v. France), decision of 30 March 1989, para. 7.4.

c/ See ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. I, communication No. 268/1987 (M.G.B. and S.P. v. Trinidad and Tobago), decision of 3 November 1989, para. 6.2.

K. Communication No. 367/1989, J.J.C. v. Canada (decision of 5 November 1991, adopted at the forty-third session)

Submitted by:	J.J.C. (name deleted)
Alleged victim:	The author
State party:	Canada
Date of communication:	18 May 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 5 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is J.J.C., a Canadian citizen residing in Montreal, Canada. He claims to be a victim of a violation by Canada of article 14 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author states that, in 1987, the "Régie du Logement" of Quebec rejected his request for a reduction of his rent; he submits that the reason for this request was his desire to obtain compensation for the continuous harassment he allegedly had been subjected to by his neighbours. He appealed against the decision of the Régie du Logement to the provincial court (Cour Provinciale) in the district of Montréal, which confirmed the decision of the Régie and rejected his appeal. According to the author, this judgement cannot be appealed pursuant to article 102 of the "Loi sur la Régie du Logement".

2.2 The author states that he asked the provincial court to retract its judgement and further filed a complaint with the Conseil de la Magistrature of the Province of Quebec about the judge's alleged failure to comply with his professional duties. He was subsequently heard by a Committee of Enquiry (Comité d'Enquête) set up by the Conseil de la Magistrature, composed of two judges and one lawyer. He complains that none of the Committee members displayed any interest in his case, and that the Committee's report was the product of "bad faith and partiality". He adds that, in any case, there is no true supervision and scrutiny of the judiciary's actions, as judges cannot be expected to sanction the actions of their colleagues. Finally, he notes that his complaint to the Committee has prompted the Conseil de la Magistrature of Quebec not to make available any longer the report of the Committee of Enquiry to citizens who have seized the Conseil.

2.3 Early in 1989, the author lodged another complaint with the Ministry of Justice, protesting against the decision of the Committee of Enquiry not to entertain his complaint against the judge.

2.4 With respect to the requirement of exhaustion of domestic remedies, the author states that, although it would be open to him to file a petition to the

Superior Court of the District of Montreal, this step would be inappropriate since (a) he cannot afford the legal fees involved and (b) the Superior Court allegedly does not deal with disputes concerning the Régie du Logement.

Complaint

3. J.J.C. contends that he was denied equality before the law and a fair trial before the provincial court of Montreal, in violation of article 14. The judge allegedly displayed a hostile attitude towards him and "clearly favoured" the other party. In particular, he submits that the judge did not comply with the requirements of the "Code de déontologie des Juges" and, accordingly, with his professional obligations, in that: (a) he refused the author's request to have the witnesses leave the courtroom; (b) he denied the author the possibility to cross-examine witnesses; and (c) he denied him the right to plead his case at the very end of the hearing.

State party's information and observations

4. The State party submits that the communication should be declared inadmissible on the grounds that it has not been sufficiently substantiated and/or that it constitutes an abuse of the right of submission, pursuant to article 3 of the Optional Protocol. The State party bases itself on the imprecise manner in which the author's submissions have been formulated and documented, the factual circumstances advanced in support of his claim, and the author's express acknowledgement that available domestic remedies have not been exhausted.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has noted that the author generally complains that the Canadian judiciary is not subject to any supervision and, more particularly, that he charges bias and misconduct on the part of the judge of the provincial court of Montreal and the Committee of Enquiry of the Conseil de la Magistrature. These allegations are of a sweeping nature and have not been substantiated in such a way as to show how the author qualifies as a victim within the meaning of the Optional Protocol. This situation justifies doubts about the seriousness of the author's submission and leads the Committee to conclude that it constitutes an abuse of the right of submission, pursuant to article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

L. Communication No. 381/1989, L.E.S.K. v. the Netherlands (decision of 21 July 1992, adopted at the forty-fifth session)

Submitted by: L.E.S.K. (name deleted)

Alleged victim: The author

State party: The Netherlands

Date of communication: 28 July 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 28 July 1988 and subsequent submissions) is L.E.S.K., a citizen of the Netherlands currently residing in France. She claims to be the victim of a violation by the Netherlands of articles 2, paragraph 3 (a); 14, paragraph 1; 17, paragraph 1; 18; 19; 23, paragraph 4; and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author, an illustrator and a painter, was married in 1972. She and her husband were members of the board of the "Stichting Verbindingsgroep 2000-3000", a foundation pursuing ideal and mystical aims, which had been founded by the author's father. At present she is living in the French section of this foundation, which is a self-supporting community.

2.2 On 15 February 1978 the author's husband filed a petition for divorce or judicial separation. In reply, the author denied that the marriage had irrevocably broken down, claiming subsidiarily that the marital dispute was mainly the fault of her husband, whom she suspected had filed for divorce in order to force her to sell their residence, and thus enable him to start his own business in Amsterdam. She filed a counter-petition, requesting maintenance in the event that either one of her husband's claims was granted.

2.3 On 9 October 1980, the District Court of Zutphen prounouned the divorce and dismissed the author's application for maintenance. The Court accepted the argument of "irrevocable breakdown" of the marriage, after the author had stated that she no longer opposed the divorce. The Court also inferred from her statement that she no longer opposed the petition on the ground that her husband was primarily responsible for the breakdown; under Netherlands divorce law, this defence may defeat a divorce petition.

2.4 By interlocutory judgement of 2 December 1981, the Court of Appeal of Arnhem upheld the decision of the district Court to the extent it had pronounced the divorce and determined the reasons leading to it. It considered that, from the point of view of both parties, the breakdown of marriage was due to "diverging convictions of life" and could be deemed definitive from the moment the wife left the conjugal residence in March 1977. The Court of Appeal rejected a new claim put forth by the author, i.e. that her husband had had extramarital affairs since 1977 and was therefore responsible for the failure of their marriage. Furthermore, the Court of Appeal ordered a hearing in order to collect information in respect of two other claims concerning the loss of pension rights and the dismissal of the author's application for maintenance.

2.5 On 15 October 1982, the Supreme Court rejected the author's further appeal, which was based on the argument that the Court of Appeal had unjustly considered her to have left the conjugal residence in March 1977, and that the affairs of her husband were merely a symptom of the irrevocable breakdown of the marriage.

2.6 In the proceedings, the date of departure from the conjugal residence was determined, on the basis of a letter of 20 August 1980, which the author had addressed to the lawyer representing her before the District court of Zutphen. The author claims that her lawyer erred in disclosing the contents of this letter, that it should have been excluded from the proceedings, and that the judgements which followed should have been set aside.

2.7 Her arguments were rejected by the Court of Appeal on 22 June 1983. It stated, inter alia, that the action of the legal representative did not prejudice her case, since the precise date of abandoning the conjugal residence was not considered to be pertinent; the departure was merely a symptom, but not the cause, of the irrevocable breakdown. On 3 February 1984, the Supreme Court dismissed the author's appeal against the latter decision.

2.8 By yet another interlocutory judgement of 27 February 1985, the Court of Appeal rejected the author's claim concerning the alleged loss of pension rights, thereby confirming the judgement of the District Court of 9 October 1980. However, the Court ordered another hearing in connection with the request for maintenance.

2.9 Finally, on 13 November 1985, the Court of Appeal rejected the author's request for maintenance. L.E.S.K. submitted her case to the European Commission of Human Rights. On 17 December 1987, the Commission concluded that the author had not exhausted all domestic remedies, as she could have appealed against the judgement of 27 February 1985. The complaint against her lawyer based on violation of his professional obligation was deemed inadmissible as incompatible ratione personae. The allegation of a violation of article 8 of the European Convention, concerning the use as evidence of the letter of 20 August 1980, was rejected as manifestly ill-founded.

Complaint

3.1 The author complains that she was denied due protection of the law, which led to various violations of her human rights. She contends that the Netherlands judicial authorities discriminated against her "by ignoring her ethical points of view and attitudes during the proceedings". More specifically, she complains that her contention was not duly heard that she never left the conjugal residence as such, but that the divorce proceedings were initiated by her husband in order to force her to sell their house. The author further contends that the letter of 20 August 1980 was used as evidence of her deliberate abandonment of the common home, whereas it had never been introduced as part of the evidence. She reiterates that the relevant passage from the letter influenced the course of proceedings to her detriment. Although the author does not specify which articles she considers to have been violated with respect to this part of her complaint, it would appear from the above that she invokes violations of article 14, paragraph 1, and article 17, paragraph 1, of the Covenant.

3.2 Furthermore, the author complains that the conjugal residence was illegally sold on 15 June 1978 with the collaboration of the notary and registration officer, both of whom were civil servants. The author notes that the house was sold without even her knowledge, much less her approval, and even before the divorce was pronounced. From the context of her submission, it transpires that the author deems this to be a violation of article 2, paragraph 3 (a), and article 23, paragraph 4, of the Covenant.

3.3 Finally, the author submits that her right to freedom of expression under article 19, as well as her right to freedom of conviction and religion under article 18, was violated, because the Netherlands courts held that the marriage had irrevocably broken down merely on account of the spouses' diverging convictions of life.

State party's observations

4.1 The State party notes that, although the author has not appealed to the Supreme Court against the interlocutory judgement of 27 February 1985 or the final judgement of 13 November 1985 of the Court of Appeal, it does not challege the admissibility on the ground that the domestic remedies have not been exhausted. It explains that, once all of the author's appeals had been dismissed, her lawyer advised her not to appeal against the dismissal of her application for maintenance, because he saw no merit in her case.

4.2 In relation to the issue of whether the author's representative violated his code of conduct by disclosing the contents of private correspondence, the State party outlines the provisons of the Code of Civil Procedure governing the "*desaveu* procedure". It notes that, although the legal representative cannot be held responsible, the author could have filed a complaint under the Counsel Act (*Advocatenwet*), which provides for disciplinary measures against legal representatives. Furthermore, the State party notes that it cannot be held responsible for the actions of a legal representative. Accordingly, it considers that this part of the communication should be declared inadmissible *ratione personae* pursuant to article 3 of the Optional Protocol, in so far as it is directed against a private individual.

4.3 The State party submits that both of the author's appeals to the Court of Appeal and the Supreme Court were dismissed since L.E.S.K. herself did not insist on the defence of denial of irrevocable breakdown of marriage. Since the irrevocable breakdown of the marriage was a fact at the moment of abandoning the conjugal residence, the contents of her letter of 20 August 1980 were totally irrelevant to the course of the proceedings.

4.4 Moreover, the State party contends that the author's separate complaints are unsubstantiated, that the facts do not disclose any violations of any of the rights protected by the Covenant, and that this part of the communication should be declared inadmissible pursuant to article 2 of the Optional Protocol.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee has ascertained that the case is not under examination elsewhere. The consideration of the same matter in 1987 by the European Commission of Human Rights does not preclude the Committee's competence.

5.3 The Committee notes that the author's claim concerning the sale of the conjugal residence relates primarily to an alleged violation of her right to property. The right to property, however, is not protected by the International Covenant on Civil and Political Rights. Accordingly, the author's allegations in respect of this issue are inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant.

5.4 As to the author's claims to have been a victim of unfair proceedings and judicial bias, the Committee notes that they relate in essence to the evaluation of facts and evidence by the Netherlands courts. The Committee recalls its established jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in any particular case. It is not, in principle, for the Committee to review the facts and the evidence presented to, and evaluated by, domestic courts, unless it can be ascertained that the proceedings were manifestly artibrary, that there were procedural irregularities amount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. After careful consideration of the material placed before it, the Committee cannot find such defects. Accordingly, this part of the Communication is inadmissible under article 3 of the Optional Protocol.

5.5 With regard to the claims of a violation of articles 17, 18, 19, 23 and 27, the Committee notes that the author has failed to substantiate her allegations, for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

M. Communication No. 382/1989, C.F. v. Jamaica (decision of 28 July 1992, adopted at the forty-fifth session)

Submitted by: C.F. (name deleted)

Alleged victim: The author

State party: Jamaica

Date of communication: 2 August 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is C.F., a Jamaican citizen born in January 1961, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his human rights by Jamaica but does not invoke the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author was arrested on 22 February 1980 and charged with the murder of one A.A.; on 26 January 1981, he was found guilty as charged and sentenced to death in the Home Circuit Court of Kingston, Jamaica. The Jamaican Court of Appeal dismissed his appeal on 18 November 1981. The author subsequently sought to petition the Judicial Committee of the Privy Council for special leave to appeal; in 1990 a London-based law firm accepted to represent him pro bono for this purpose. As of May 1992, the petition had not been filed.

2.2 It appears that warrants for the author's execution were signed on two occasions by the Governor-General of Jamaica. On both occasions the author was granted a stay of execution, the second time in February 1988.

2.3 With respect to the facts, it is merely stated that a prosecution witness testified during the trial that, on the night of the crime, she had heard the deceased talk to the author outside her house, apparently begging for his life, which would appear to imply that the deceased and the author were engaged in a dispute.

Complaint

3.1 It transpires from the author's submissions that he considers that he did not receive a fair trial, or that he has been discriminated against; repeatedly, he refers to the difficulties encountered in Jamaica, be it in the local courts or in everyday life, to obtain "justice for Black people".

3.2 The author also appears to claim inhuman and degrading treatment, in violation of article 7, and that he was not treated with respect for the inherent dignity of the person, in violation of article 10. In several submissions spread over a period of three years (1989 to 1992), he refers (a) to his cell as being "cold as ice"; (b) to prison warders who regularly "try to kill some prisoners"; (c) to beatings sustained during the years 1983 to 1986; and (d) to the absence of medical or dental care in the prison.

State party's information and observations and author's comments

4.1 In his initial transmittal of the communication to the State party, dated 14 November 1989, the Committee's Special Rapporteur on New Communications requested the State party, *inter alia*, to provide information about the admissibility of the communication, including about the author's mental health.

4.2 By submission of 12 February 1990, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, as the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal.

4.3 In a further submission, the State party adds that a mental status examination "was carried out on C.F. on 6 February 1990. The examination revealed a 'young man who spoke freely and was not depressed. He displayed no psychotic features and no evidence of cognitive impairment. His intelligence seemed average. He is presently displaying no features of psychological disturbance'. Prior to his examination, C.F. had not undergone any psychiatric examination. His behavior had been normal throughout the period of his incarceration. He had been treated on numerous occasions by general practitioners for medical conditions, but on no occasion was it considered necessary to have him examined by a psychiatrist".

4.4 On 28 May 1992, the author's representative before the Judicial Committee of the Privy Council indicated that leading counsel had advised that a petition would have merits, that it would be filed within two weeks, and that it would be based on three main grounds (delay; issue of accident inadequately left to jury; inadequate directions on identification).

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has taken note of the State party's contention that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, as the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has secured pro bono legal representation for this purpose, and that his representative is endeavouring to submit a petition for special leave to appeal on his behalf. In the circumstances, the Committee concludes that the requirements of article 5, paragraph 2 (b), or the Optional Protocol have not been met.

5.3 In respect of the author's allegations under article 7, the Committee notes that these do not appear to have been brought to the attention of the competent authorities and concludes, accordingly, that domestic remedies have not been exhausted.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision may be reviewed pursuant to rule 92, paragraph 2, of the Committee's rules of procedure, upon receipt of information from the author or from his counsel to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

N. Communication No. 383/1989, H.C. v. Jamaica (decision of 28 July 1992, adopted at the forty-fifth session)

Submitted by: H.C. (name deleted)

Alleged victim: The author

State party: Jamaica

Date of communication: 4 March 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is H.C., a Jamaican citizen serving a 20-year sentence at the General Penitentiary at Kingston. He claims to be a victim of a violation of his human rights by Jamaica.

Facts as submitted by the author

2.1 The author states that on 4 May 1987, at 2.30 p.m., he was on his way home together with three others. They stopped at a shop, where two of them bought drinks. The author, who had been waiting outside the shop, states that one E.G. was standing on the veranda of his house just near the shop and told him to move away from the gateway. According to the author, E.G. assumed an aggressive attitude as he stepped forward and began pushing him, accusing him of being a thief planning to rob his house. The argument was stopped by E.G.'s wife.

2.2 The author indicates that later the same day, while returning from his farm, he realized that he was being followed by E.G.; the latter first threatened him verbally and then with a long knife. The author, who was carrying a machete, alleges that he began defending himself, but only after E.G. had stabbed him three times in the shoulder. He claims that the aggressor backed away after receiving injuries on his cheek and his right hand. The incident was witnessed by four persons, one of whom alerted the police. However, it is submitted that the police did not question the author or those present. E.G. was seriously injured and hospitalized. He suffered *inter alia* permanent nerve damage.

2.3 On 15 May 1987 the author was arrested and charged with "assault with intent to harm". On 1 June 1987 he appeared in court and on 19 June 1987 he was released on bail. On 5 November 1987, he was found guilty and sentenced to 20 years' imprisonment.

2.4 The author claims to have acted in self-defence and submits that during the trial two witnesses testified that he had actually been a victim of aggession. He contends that his lawyer did not properly represent him during the trial, since he did not cross-examine E.G. and was reluctant in calling witnesses on the author's behalf. He further indicates that on 10 October 1987 he appealed to the Court of Appeal; however, he claims that his lawyer, who was privately retained, did not attend the hearing. On 18 April 1988, he was informed that his application for leave to appeal had been dismissed. He submits that he later learned that the judge who tried his case at first instance also participated in the judgement of the Court of Appeal.

Complaint

3. The author claims that his trial was unfair and his conviction unjust. Although he does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation of article 14 of the Covenant.

State party's observations and author's comments thereon

4. By submission on 22 February 1990, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, since the author may still appeal to the Judicial Committee of the Privy Council, either by leave of the Court of Appeal or by leave of the Judicial Committee itself.

5. In his comments on the State party's observations, the author states that he has not been able to petition the Judicial Committee of the Privy Council, because he does not have legal representation. He submits that he has requested assistance from various instances, including the Legal Aid Clinic, the Jamaica Council for Human Rights, the Ministry of Justice and the Registrar of the Court of Appeal, all to no avail.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that the author's claims relate primarily to the evaluation of facts and evidence by the courts. It recalls that it is generally for the courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case, unless it is apparent that the courts' decisions are manifestly arbitrary. The Committee has no evidence that this was the case in the author's trial. Accordingly, this part of the communication is inadmissible under article 3 of the Optional Protocol.

6.3 As regards the author's claim concerning his legal representation, the Committee observes that the author's lawyer was privately retained and that his alleged failure to properly represent the author cannot be attributed to the State party. This part of the communication is therefore inadmissible.

6.4 As regards the author's claim concerning the participation of the trial judge at the appeal proceedings, the Committee, on the basis of the information before it, finds that the allegations are incorrect and thus unsubstantiated for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communiction is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

O. Communication No. 393/1990, A.C. v. France (decision of 21 July 1992, adopted at the forty-fifth session)

Submitted by: A.C. (name deleted)

Alleged victim: The author

State party: France

Date of communication: 16 March 1990 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is A.C., a French citizen born in 1940, currently residing in Paris. He claims to be a victim of a violation of his human rights by France. While not specifically invoking any provisions of the International Covenant on Civil and Political Rights, it appears from the context of his submissions that he claims to be a victim of violations of article 14 of the Covenant.

Facts as submitted by the author

2.1 On 26 June 1984, on the platform of a Paris Metro station, the author had an altercation with a transportation officer of the Paris Metro (*Régie autonome des transports parisiens*) about the validity of his transportation ticket; he claims that he received several blows, the effect of which allegedly was compounded by a pre-existing ailment.

22. The author did not initiate proceedings against the agent who had intercepted him. Instead, this agent filed criminal charges against A.C. and, on 18 April 1986, the *Tribunal Correctionnel* convicted him of assault against *Régie autonome des transports parisiens* agents in the line of duty and fined him 1,000 French francs. The author denies having resorted to any physical violence and notes that the hospital which admitted the *Régie autonome des transports parisiens* agent did not want to place her on sick leave or issue a medical certificate: the document produced subsequently is dismissed as a forgery. Both he and the public prosecutor appealed the judgement. On 4 November 1986, the Court of Appeal dismissed the author's appeal, considering that the judge of first instance had correctly evaluated, both in fact and in law, the events of 26 June 1984. On 8 April 1987, the Court of Cassation rejected the author's further appeal.

2.3 The author submits that he was not notified of the date of the hearing of his appeal and observes, *inter alia*, that, when appealing to the Court of Cassation on 10 November 1986, he was told to file his written brief within 10 days, although the written judgement of the Court of Appeal was not yet available; the author received the latter judgement only during the first days of 1987.

2.4 On 11 January 1989, the author filed a complaint against the two judges of the Tribunal Correctionnel and the Court of Appeal, respectively. As to the former, he claimed that the judge chose to rely on evidence known to be incorrect; in respect of the latter judge, it was contended that he had endorsed the unfair and arbitrary allegations made against the author during the appeal. On 22 February 1989, the Criminal Chamber of the Court of Cassation refused to designate a jurisdiction charged with the examination of the complaint, on the grounds that the author in fact sought to challenge the motiviation of the judgements of the Tribunal Correctionnel and the Court of Appeal, which was not susceptible of review:

> "Whereas the complaint consists in the absence of any other accusation, of a criticism of jurisdictional decisions ...
>
> "In principle, decisions of such a nature cannot be reviewed ...
>
> "These are no grounds for designating a jurisdiction."

Notified of this decision on 16 May 1989, the author withdrew his complaint against the judges by letter of 13 June 1989.

2.5 Subsequently, the author requested that his conviction be reviewed and a retrial ordered. On 17 May 1991, the Committee on Review of Criminal Convictions of the Court of Cassation decided that the request was inadmissible, as it was neither based on fresh evidence nor on facts overlooked during the criminal proceedings, within the meaning of article 622, paragraph 4, of the Code of Criminal Procedure.

2.6 On 5 May 1987, the author submitted his case to the European Commission of Human Rights. On 11 October 1989, the Commission declared his application inadmissible under articles 26 and 27, paragraph 3, of the European Convention on Human Rights, on the ground of non-exhaustion of domestic remedies. The Commission considered, in particular, that the author should have submitted a supplementary brief to his appeal to the Court of Cassation without delay upon receipt, on or around 10 January 1987, of the judgement of the Court of Appeal.

Complaint

3.1 The author claims that he did not have a fair trial in the Tribunal Correctionnel because he was convicted on the basis of false evidence. He further submits that the proceedings before the Court of Cassation were unfair, notably because he did not have adequate time and opportunity to prepare his defence and because he was not able to defend himself in person before the Court, since he was not notified of the date of the hearing.

3.2 The author contends that he was denied access to what he terms a particularly important element of the file, namely a written deposition made on 27 June 1984 by the Régie autonome des transports parisiens agent who had accused him of assault. Despite several requests, the author only obtained a copy of this deposition on 8 June 1989, i.e., after the rejection of his appeal by the Court of Cassation and after submitting his case to the European Commission of Human Rights.

3.3 The author contends that the events of 26 June 1984 and the judicial proceedings aggravated his ailments; after numerous periods of absence from work, he lost his employment. In the circumstances, he asks the Committee to award damages in the order of 600,000 French francs, as well as an annual disability pension of 60,000 francs from the State party.

3.4 With regard to the reservation made by France in respect of the competence of the Human Rights Committee to consider communications which have already been considered under another procedure of international investigation or settlement (art. 5, para. 2 (a), of the Optional Protocol), the author submits that his communication raises issues that were not considered by the European Commission. Thus, his complaint before the Court of Cassation about the fact that he was not notified of the date of the appeal and that the Court of Appeal did not make available to him documents deemed essential for the preparation of the defence was not looked at by the Commission. Secondly, he submits that since the Commission was not in receipt of the written deposition of G.L., because he himself only obtained a copy after filing his complaint, the matter now before the Committee is not "the same" within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. Thirdly, he notes that the Commission could not examine his complaint of misuse of power against the judges referred to in paragraph 2.4 above, as it was submitted subsequent to his application to the Commission. In respect of the second allegation, the author observes that he also was not notified of the date of the hearing and was therefore unable to prepare his case properly; he further notes that the decision of the Court of Cassation of 22 February 1989 is final. Domestic remedies therefore are said to be exhausted.

State party's information and observations

4.1 The State party argues that the communication is inadmissible under article 5, paragraphs 2 (a) and 2 (b), of the Optional Protocol.

4.2 With respect to the author's conviction of assault and the ensuing judicial proceedings, the State party notes that the same matter was previously examined and dismissed by the European Commission of Human Rights. It recalls its reservation made in respect of article 5, paragraph 2 (a), of the Optional Protocol (see para. 3.4 above), and submits that this part of the communication should be declared inadmissible under that provision.

4.3 As to the author's complaint directed against the judges of the *Tribunal Correctionnel* and the Court of Appeal, the State party contends that it is inadmissible on the ground of non-exhaustion of domestic remedies, since the author withdrew his complaint on 13 June 1989. In addition, the State party notes that the author never deposited the security ("*consignation*") of 3,000 French francs requested by the senior examing magistrate (*doyen des juges d'instruction*), which would, in any event, have resulted in the complaint being declared inadmissible, pursuant to article 88 of the French Code of Criminal Procedure.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The author has challenged the State party's contention that he failed to exhaust available domestic remedies in respect of his complaint against the judges of the Tribunal Correctionnel and the Court of Appeal. For the reasons set out in the following paragraph, the Committee need not pronounce itself on this point.

5.3 The Committee notes that the complaint pertains to the evaluation of evidence and alleged bias of the judges in the case, and recalls its established jurisprudence that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in any given case. It is not in principle for the Committee to make such an evaluation or challenge the motivation of decisions handed down by national courts, unless it can be ascertained that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. Although it has been requested to examine matters belonging into the latter category, the Committee considers that while the author has sought to substantiate his allegation, the material before it does not reveal that the conduct of either trial or appeal suffered from such obvious defects. Accordingly, the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

F. Communication No. 394/1990, C.B.D. v. the Netherlands (decision of 22 July 1992, adopted at the forty-fifth session)

Submitted by: C.B.D. (name deleted) (represented by counsel)

Alleged victim: The author

State party: The Netherlands

Date of communication: 9 January 1990 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 9 January 1990) is C.B.D., a citizen of the Netherlands, residing in Arnhem, the Netherlands, He claims to be the victim of a violation by the Netherlands of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author states that he was prosecuted for his refusal to perform alternative service pursuant to the Act on Conscientious Objection to Military Service (*Wet Gewetensbezwaarden Militaire Dienst*). On 22 March 1985, he was sentenced to six months' imprisonment by the court of first instance. The Court of Appeal dismissed his appeal on 2 May 1986; this judgement was confirmed by the Supreme Court (*Hoge Raad*) on 19 May 1987.

2.2 The author states that his application for calling the expert witness L.W. at the appeal hearing was dismissed by the Court, on the ground that the Court was sufficiently informed by having had access to the file, which included documents produced by L.W. The author submits that this refusal was detrimental to his defence, as, during the trial at first instance, the witness had only given evidence as an expert, not as someone who knew the author personally and was in a position to inform the Court about the author's personal circumstances. The author concedes that said witness was already heard by the court of first instance, but argues that he wanted to put additional questions to him on appeal.

Complaint

3.1 The author alleges that the refusal of the Court of Appeal to hear an important defence witness violated his right to a fair trial as protected by article 14 of the Covenant. He further alleges that the Netherlands defence policy violates articles 6 and 7 of the Covenant, and that therefore the requirement to perform (alternative) military service is of an illegal character.

3.2 In particular, the author contends that there was no lawful basis to require him to perform alternative service. He claims that the Netherlands nuclear obligations vis-à-vis the North Atlantic Treaty Organization (NATO) constitute a crime against peace. Therefore, the Act on Compulsory Military Service and the Act on Conscientious Objection to Military Service, which endorse this policy, allegedly are of an illegal character. The author further argues that the use of nuclear weapons violates the right to life and the right to be free of inhuman treatment.

State party's observations and author's comments thereon

4.1 By submission dated 25 October 1991, the State party concedes that the author has exhausted all domestic remedies available to him.

4.2 With regard to the alleged violation of articles 6 and 7 of the Covenant, the State party argues that the communication is inadmissible, as the author has failed to substantiate his cliam that he has been a victim of said violation.

4.3 As regards the alleged violation of article 14 of the Covenant, the State party states that, pursuant to article 263 of the Code of Criminal Procedure (Wetboek van Strafvordering), an accused is entitled to have defence witnesses and experts summoned by the Public Prosecutor to testify at the court hearing. After an application by the defence, the court may also hear witnesses and experts who have not been summoned, but who are present at the hearing (art. 280 juncto of the Code of Criminal Procedure). The application may be dismissed if the court considers that not hearing a witness or expert cannot reasonably be said to prejudice the defence.

4.4 The State party submits that L.W. was heard as an expert by the Court of first instance; his testimony was not concerned with establishing the facts of the case. The Court of Appeal dismissed the author's application under article 280 juncto 296 of the Code to hear L.W. again, on the ground that it considered itself sufficiently informed through the documents in the record, which included the official transcript of the hearing at first instance and documents written by L.W.

4.5 The State party argues that the author's defence was not prejudiced by the failure of the Court to hear L.W. as an expert or witness, and that this part of the author's communication should therefore be declared inadmissible. The State party refers to the decision of the European Commission of Human Rights, dated 14 April 1989, concerning the same matter, which stated that "it does not appear that the Court of Appeal's decision not to hear the expert concerned was unfair or arbitrary".

4.6 The State party finally refers to the Committee's constant jurisprudence that the Covenant does not preclude the institution of compulsory national service by States parties. The author, while recognized as a conscientious objector to military service under the Military Service (Conscientious Objection) Act, refused to perform the alternative service and was consequently sentenced to six months' imprisonment. The State party argues that the Covenant does not contain a provision prohibiting the enforcement of military or alternative service, and that the communication is therefore inadmissible, as being incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol.

5.1 In his comments on the State party's observations, the author concedes that the Covenant does not contain a provision prohibiting the enforcement of military and alternative service. He questions, however, the right of the State party to force him to become an accomplice to a crime against peace. The author stresses that the preparations by the State party to deploy nuclear weapons violate articles 6 and 7 and of the Covenant. As the Conscientious Objection Act supports this policy, it is, according to the author, null and void. The author submits that, as he is forced to become an accomplice in a crime against peace, he is therefore a victim of the alleged violation of articles 6 and 7. The author further contends that the whole global population, including himself, is a victim of a crime against peace.

5.2 The author maintains that his defence has been compromised by the refusal of the Court of Appeal to hear L.W. as an expert and witness. The author states that he wanted to prove that his convictions, on which his refusal to perform alternative service was based, were just, and that L.W.'s testimony would have assisted him therein. He claims that the Court of Appeal's refusal to hear L.W. was unfair and arbitrary.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The author alleges that he is a victim of a violation by the State party of article 14 of the Covenant, as the Court of Appeal refused to hear defence witness L.W. The Committee observes that article 14, paragraph 3 (e), guarantees an accused in a criminal trial the right to obtain the attendance and examination of witnessess on his behalf under the same conditions as witnesses against him. The Committee notes that the Court of Appeal had access to L.W.'s testimony given during the trial at first instance. In these circumstances, the Committee notes that the author has not substantiated, for purposes of admissibility, his claim to the effect that the Court of Appeal's refusal to hear the witness L.W. was arbitrary and could constitute a violation of article 14, paragraph 3 (e), of the Covenant. The author thus has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

6.3 With regard to the author's objection to the right of the State to require him to perform military or alternative national service, the Committee observes that the Covenant does not preclude the institution of compulsory military service by States parties, and refers in this connection to the pertinent provision in article 8, paragraph 3 (c) (ii). Consequently, by mere reference to the requirement to do military, or for that matter alternative service, the author cannot claim to be a victim of a violation of articles 6 and 7 of the Covenant. Therefore, this part of the communication is inadmissible under article 3 of the Optional Protocol. a/

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See sections T, communication No. 401/1990, decision of 7 November 1991, and U, communication No. 403/1990, decision of 7 November 1991, below.

Q. Communication No. 396/1990, M.S. v. the Netherlands (decision of 22 July 1992, adopted at the forty-fifth session)

Submitted by: M.S. (name deleted) (represented by counsel)

Alleged victim: The author

State party: The Netherlands

Date of communication: 15 February 1990 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 15 February 1990) is M.S., a citizen of the Netherlands, residing at Utrecht, the Netherlands. He claims to be a victim of a violation by the Netherlands of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author states that, on 27 March 1985, the court of first instance (*Politierechter*) at Utrecht convicted him of having assaulted, on 30 January 1985, the father of his ex-girlfriend. On 16 October 1985, the Court of Appeal dismissed his appeal and, on 3 February 1987, the Supreme Court (*Hoge Raad*) confirmed the Court of Appeal's judgement.

2.2 The author submits that he acted in self-defence, that he was assaulted by his ex-girlfriend's parents and brother, but that his assailants were not prosecuted, although he filed a complaint against them with the Utrecht police. He alleges that the police investigation in his case was biased and that evidence and facts were "manipulated" and distorted by the police. He states that the testimony of witnesses on his behalf would have established that the charges against him were fabricated. However, he did not call any witnesses because, in his opinion, he should not have to bear the burden of proof that the police investigation had been biased, as such a requirement would violate his right to "due process".

Complaint

3. The author claims that he was not given a fair trial, because the Court relied on the allegedly biased evidence gathered by the police. He submits that the public prosecutor should have ordered supplementary investigations, to oppose the biased initial investigations made by the police. He further claims that the prosecutor's failure to prosecute his assailants violates the principle of equality of arms.

State party's observations and author's comments thereon

4.1 By submission of 27 November 1991, the State party argues that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies. The State party submits that the author could have lodged a complaint with the Court of Appeal pursuant to article 12 of the Code of Criminal Procedure (Wetboek van Strafvordering), which reads:

> "1. If no prosecution is brought in respect of an offence or the prosecution is dropped, the person concerned may lodge a complaint with the Court of Appeal in whose jurisdiction the prosecution ought to have been brought. The Court of Appeal may instruct the Public Prosecutor to draw up a report and may order that a prosecution be instituted or continued.
>
> "2. The Court of Appeal may refuse to give such an order on grounds derived from the public interests.
>
> "3. ...".

4.2 The State party further submits that, as a general rule, the Public Prosecutor may decide not to prosecute someone "for reasons relating to the public interest" (Code of Criminal Procedure, art. 167, para. 2). It stresses that, in the author's case, the Public Prosecutor saw no reason to charge anyone but the author. The State party submits that the Covenant does not provide for the right to have another person prosecuted and refers in this context to the Committee's admissibility decision in communication No. 213/1986. a/ It therefore argues that this part of the communication is inadmissible as being incompatible with the provisions of the Covenant.

4.3 As regards the author's contention that the police investigation in his case was biased, and that only evidence against him was gathered, the State party submits that the Court may convict someone only on the basis of convincing legal evidence, presented during the hearing (Code of Criminal Procedure, art. 338). Legal evidence includes, inter alia, the Court's own observations during the hearing, and statements made by the accused, witnesses and experts. The State party submits that the author had the opportunity during the trial to submit any information that could have been relevant to the case. It argues that the author's claims have not been substantiated and refers in this connection to the decision of the European Commission of Human Rights, dated 2 May 1989, in the same matter, which stated that the examination of the author's complaints "does not disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in article 6".

5.1 In his comments, the author argues that lodging a complaint pursuant to article 12 of the Code of Criminal Procedure would not have given him the desired equality: it would only have resulted in the prosecution of the persons who had assaulted him, not in his acquittal.

5.2 The author further contends that the Court should have discharged him, because of the biased investigation by the police. Since the author appealed the Court's judgement to the Court of Appeal and the Supreme Court, he claims to have exhausted all available domestic remedies.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As regards the author's claim that his rights were violated by the prosecutor's failure to prosecute the author's alleged assailants, the Committee observes that the Covenant does not provide for the right to see another person criminally prosecuted. Therefore, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.3 As regards the author's allegation that the trial against him was unfair, the Committee recalls its constant jurisprudence that it is in principle not for the Committee, but for the Courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it is apparent that the Court's decisions were arbitrary and amounted to a denial of justice. In the circumstances, the Committee concludes that this part of the communication is inadmissible under article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/45/40), annex XI, sect. B, communication No. 213/1986, decision adopted on 30 March 1989, para. 11.6.

R. Communication No. 397/1990, P.S. v. Denmark (decision of 22 July 1992, adopted at the forty-fifth session)

Submitted by: P.S. (name deleted)

Alleged victims: The author and his son, T.S.

State party: Denmark

Date of communication: 15 February 1990 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 1992,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial submission dated 15 February 1990 and subsequent submissions) is P.S., a Danish citizen born in 1960. He submits the communication on his own behalf and that of his son, T.S., born in January 1984. The author claims that he and his son are victims of violations by Denmark of articles 14, paragraphs 2 and 3 (c), 17, 18, 21, 22, 23, 24, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author married in 1983. In 1986 he and his wife were separated by decision of the County Authorities of North Jutland, which also decided on joint custody of the son. In 1988 the Municipal Court of Varde pronounced the divorce and awarded custody to the mother. The author appealed to the Court of Appeal and claimed custody of his son. On 10 May 1988, the Court of Appeal confirmed the Municipal Court's judgement in respect of the custody question.

2.2 During the proceedings, a temporary agreement on the right of access was concluded between the author and his ex-wife; yet, after discovering that the author had converted to the faith of Jehovah's Witnesses, and that he had taken his son to a rally of Jehovah's Witnesses, the mother requested the County Authorities in Odense to decide on her conditions for granting access to T.S., under which the author had to refrain from teaching the faith of Jehovah's Witnesses to his son. In this context, it is noted that, under Danish law, the parent who has custody may decide on the child's religious education.

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* An individual opinion submitted by Mr. Bertil Wennergren is appended.

2.3 On 13 October 1988, a meeting was arranged between the author and his ex-wife; expert advice on child and family matters was given to both parties, in accordance with relevant Danish legislation. Despite this advice, the author refused to refrain from teaching his son the tenets of his religion. He also rejected the mother's suggestion to limit the right of access to visits at the address of the son's paternal grandmother. By letters of 30 November and 11 December 1988, the author requested the County Authorities of Funen to settle the dispute.

2.4 By decision of 13 December 1988, the County Authorities of Funen determined the extent of time father and son were entitled to spend together, and the conditions under which such visits might take place. In this connection, the County Authorities stated:

> "Access to T. is granted on condition that T., while visiting his father, is not taught the faith of Jehovah's Witnesses and that T. does not participate in Jehovah's Witnesses' rallies, gatherings, meetings, missions or similar activities".

Under Danish law, it is possible to stipulate exact conditions for the exercise of visiting rights, but only if such conditions are deemed necessary for the well-being of the child. In this case, the authorities found that the child was facing a "loyalty crisis" vis-à-vis his parents, and that if no limitations were imposed on the religious influence he was exposed to during his contacts with the father, his normal development might be jeopardized.

2.5 On 17 December 1988, the author appealed to the Directorate of Family Affairs, arguing that the decision of the County Authorities constituted unlawful persecution on religious grounds.

2.6 By letter of 7 January 1989, the author notified the County Authorities that his ex-wife refused to comply with the access arrangements determined by the authorities. To enforce his right of access, he requested the Sheriff's Court (Fogedretten) of Odense to issue an access order. By decision of 3 February 1989, the Court decided to stay the proceedings on the ground that the author was in no position to make a clear and explicit declaration that he would fully comply with the conditions imposed on his right of access and that the matter was still pending before the Directorate of Family Affairs.

2.7 By interlocutory judgement of 29 June 1989, the Court of Appeal dismissed the author's appeal against the decision of the Sheriff's Court of 3 February 1989, on the ground that the statute of limitations had expired. By the same judgement, the Court of Appeal dismissed another (interlocutory) appeal of the author, which had been directed against a decision on access of the Sheriff's Court of 19 May 1989. The Court of Appeal contended that the claims could not be put forward under the procedure used by the author.

2.8 On 19 March 1989, the author informed the Danish Minister of Justice of his case. By decision of 30 March 1989, the Directorate of Family Affairs upheld the County Authorities' decision of 13 December 1988 on the right of access. The author then filed a complaint with the Parliamentary Ombudsman.

2.9 On 27 June 1989, the Sheriff's Court of Odense issued yet another order concerning the enforcement of the author's right of access. It argued that, according to the statements of the mother, the author had disregarded the conditions pertaining to the exercise of his right of access during one of T.S.'s visits. The Court again suspended the proceedings on the ground that the question of validity of said conditions was still under review by the Court of Appeal.

2.10 In his reply of 1 November 1989 to the author, the Ombudsman acknowledged that the parents' freedom of religion must be taken into consideration, but that this did not exclude consideration of exceptional circumstances, especially where the best interests of the child are concerned, in which case limitations on the exercise of religious freedom could be imposed during contacts with the child. The Ombudsman reiterated that, in the present case, the conditions imposed on the author's right of access should be deemed to be in the best interest of the son. On the other hand, he conceded that the author's freedom of religion must also be taken into consideration, in the sense that only "strictly necessary conditions" could be imposed in this respect. The Ombudsman noticed that the authorities had not found any reason to deny the author contact with the son on account of his being a Jehovah's Witness, even though it was known that the daily life of Jehovah's Witnesses is strongly influenced by their beliefs. Accordingly, the Ombudsman requested the authorities to define exactly the circumstances under which the son's visits might take place.

2.11 On 28 February 1990, after consultations with the author and the mother, the County Authorities formulated the following conditions:

> "The right of access shall continue only on condition that the son, during visits to his father, will not be taught the faith of Jehovah's Witnesses. This means that the father will agree not to bring up the subject of Jehovah's Witnesses faith in the company of the child, nor start conversations about this subject. Moreover, the father will agree not to play tapes, show films or read literature about the faith of Jehovah's Witnesses, nor to read the Bible or say prayers in conformity with this faith in the presence of the child.
>
> "Another condition of the continued right of access is that the son will not participate in Jehovah's Witnesses' rallies, gatherings, meetings, missions or similar activities. The expression 'or similar activities' means that the son will not be allowed to participate in any other social gatherings ... where texts from the Bible are read aloud or interpreted, where prayers are said in conformity with the faith of Jehovah's Witnesses or where literature, films or tapes are presented about the faith of Jehovah's Witnesses".

2.12 On 1 March 1990, the author appealed to the Department of Private Law (the former Directorate of Family Affairs), arguing that he and his son were experiencing continuous persecution and that his rights to freedom of religion and thought had been violated. He submitted another complaint to the Parliamentary Ombudsman against the decision of the County Authorities. By decision of 10 May 1990, the Department of Private Law upheld the County Authorities' decision of 13 December 1988, as defined on 28 February 1990. It stated, inter alia, that the conditions imposed on the author's right of access were not excessive having regard to his freedom of religion.

2.13 Further submissions from the author reveal that he has continued to petition the authorities. At present, his right to access can be exercised only under supervision, as he has been unwilling to comply with the conditions imposed on him.

Complaint

3. The author claims violations of:

(a) Article 14, paragraph 2, because his visiting rights allegedly were refused on the mere suspicion that he might do something wrong in the future;

(b) Article 14, paragraph 3(c), as the dispute dates back to August 1986 and has not been settled by the authorities five and a half years later;

(c) Article 17, as the conditions imposed on him by administrative and judicial decisions constitute an unlawful interference with his privacy and family life. On account of said decisions he claims to have been subjected to unlawful attacks on his honour and reputation;

(d) Article 18, because if the authorities had respected its provisions, there would have been no case in the first place;

(e) Articles 21 and 22, as the restrictions to which he and his son are subjected entail violations of the exercise of their rights of peaceful assembly and freedom of association;

(f) Article 23; at no time did the Danish authorities try to protect the family unit;

(g) Article 24, in respect of his son;

(h) Article 26, which is said to follow from the violations of articles 14, paragraphs 2 and 3(c), 18, 21 and 22;

(i) Article 27, which is said to follow from the violation of article 18.

State party's observations and author's comments thereon

4.1 The State party explains the operation of Danish legislation governing separation of spouses, divorce, custody and access to children, and of the relevant administrative and judicial authorities. It adds preliminary comments on the author's grievances.

4.2 The State party notes that custody of the son was awarded to the mother, in compliance with Danish legislation and court practice. Accordingly, she has the exclusive right to decide on the son's personal affairs and to act on his behalf. The State party claims that the communication should be declared inadmissible *ratione personae* in respect of T.S., on the ground that the author has no standing under Danish law, to act on behalf of his son without the consent of the custodial parent.

4.3 The State party claims that the author has failed to exhaust available domestic remedies. It notes that on 10 May 1990, the Department of Private Law rendered its final decision in respect of the conditions imposed on the author's right of access; with this, only the available administrative procedures were exhausted. Pursuant to section 63 of the Danish Constitutional Act, the author should then have requested from the courts a judicial review of the terms and conditions imposed by the decision.

4.4 The State party also observes that the courts may directly rule on the alleged violations of Denmark's international obligations under the International Covenant on Civil and Political Rights. It concludes that, as the author failed to submit his complaint to the Danish courts, the communication is inadmissible under articles 2 and 5, paragraph 2(b), of the Optional Protocol.

4.5 In his comments on the State party's submission, the author states, inter alia, that he does not want to seize the courts because of the unnecessary expenditure of taxpayers' money and for reasons of time and stress. He also expresses his doubts about the effectiveness of a trial in his case.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has taken notice of the State party's contention that the author has no standing to act on behalf of his son, as Danish law limits this right to the custodial parent. The Committee observes that standing under the Optional Protocol may be determined independently of national regulations and legislation governing an individual's standing before a domestic court of law. In the present case, it is clear that T.S. cannot himself submit a complaint to the Committee; the relationship between father and son and the nature of the allegations must be deemed sufficient to justify representation of T.S. before the Committee by his father.

5.3 As regards the author's claims of a violation of articles 14, 21, 22 and 27, the Committee considers that the facts as submitted by the author do not raise issues under these articles. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

5.4 With regard to the author's allegations of violations of articles 17, 18, 23, 24 and 26, the Committee observes that article 5,,paragraph 2 (b), of the Optional Protocol precludes it from considering a communication unless it has been ascertained that domestic remedies have been exhausted. In this connection the Committee notes that the author has exhausted only administrative procedures; it reiterates that article 5, paragraph 2(b), of the Optional Protocol, by referring to "all available domestic remedies", clearly refers in the first place to judicial remedies. a/ The Committee recalls the State party's contention that judicial review of administrative regulations and decisions, pursuant to section 63 of the Danish Constitutional Act, would be an effective remedy available to the author. The Committee notes that the author has refused to avail himself of these remedies, because of considerations of principle and in view of the costs involved. The Committee finds, however, that financial considerations and doubts about the effectiveness of domestic remedies do not absolve the author from exhausting them. Accordingly, the author has failed to meet the requirements of article 5, paragraph 2 (b), in this respect.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

Notes

a/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex XI, sect. D, communication No. 262/1987 (R.T. v. France), decision of 30 March 1989, para. 7.4.

Appendix

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 92, paragraph 3, of the Committee's rules of procedure concerning the Committee's decision on communication No. 397/1990 (P.S. v. Denmark)

The author's communication concerns the modalities of contacts with his son T., now eight years old, as well as the position of the Danish authorities on this matter since 1986.

The Parliamentary Ombudsman became involved in this matter following a complaint by the author. In his decision of 1 November 1989, the Ombudsman accepted in principle the standpoint of the administrative authorities, namely that limitations on the author's exercise of his religious freedom during his contacts with his son were necessary. Against this background he merely requested the authorities to define the conditions more precisely, particularly with regard to the terms "teach" and "or similar activities". The author claims that the Ombudsman's decision, in conjunction with the administrative decisions in his case, violated his rights under article 18 of the Covenant.

The State party, in its observations, informed the Committee about the Ombudsman's status and functions, but did not address the content of the Ombudsman's decision nor its role in the process. It may well be that the State party deemed the Ombudsman to be a supervisory body who did not participate in the process. However, even if it were true that the Ombudsman's decisions are supervisory decisions and that they are not legally binding as such, they have considerable de facto effects on an administrative process. Had the Ombudsman found that the limitations on the author's exercise of his freedom of religion imposed by the administrative authorities were excessive, he would have informed the administrative authorities and requested them to reconsider their position accordingly. In principle they would have had to comply, as they complied with the decision of 1 November 1989. By endorsing the authorities' standpoint, the Ombudsman de facto prevented them from reconsidering and modifying their standpoint. And the Ombudsman is not independent to such an extent that the State party would not be responsible for his actions.

The Optional Protocol allows "communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant". The author claims that he is a victim of a violation committed by the Ombudsman. Given the effects the Ombudsman's decision must be assumed to have had, I come to the conclusion that said claims may raise issues under the Covenant, first under article 18 but equally under article 19, as the conditions prescribed also limited the author's freedom of expression. There are no remedies available against a decision of the Parliamentary Ombudsman. The communication therefore is, in my opinion, admissible as far as it regards claims directed against the Ombudsman; otherwise I am in full agreement with the Committee's decision. I do however want to add that, had the communication been declared admissible, further attention should have been given to the issue of standing of the author, in respect of his son. I consider that from some points of view the author might be said to have interests that conflict with those of the son, and which might disqualify him from representing his son.

Bertil WENNERGREN

S. Communication No. 398/1990, A.M. v. Finland (decision of 23 July 1992, adopted at the forty-fifth session)

Submitted by: A.M. (name deleted)

Alleged victim: The author's wife

State party: Finland

Date of communication: 24 January 1990 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 24 January 1990) is A.M., a Finnish citizen, born in 1924 and residing in Turku, Finland. He submits the communication on behalf of his wife, who claims to be the victim of a violation of articles 2, paragraph 2, and 5, of the International Covenant on Civil and Political Rights by Finland.

Facts as submitted by the author

2.1 The author and his wife concluded a real estate deal in 1984. He claims that, in the context of this deal, the sum of 322,164 Finnish markkaa, of which he and his wife were the owners, should have been credited to their account in a Finnish commercial bank. However, this bank, which had financed the deal, allegedly appropriated the securities that had been handed over to it by the author and his wife to the debtor, approximately 10 days after the conclusion of the deal.

2.2 The author indicates that he filed a civil suit against the bank with the City Court of Turku on 14 June 1988. The City Court dismissed the complaint and the author and his wife appealed to the Court of Appeal of Turku on 6 April 1989; the Court of Appeal has not yet adjudicated the appeal.

2.3 The author further indicates that he also reported the alleged fraud to the City Police of Turku; in this context, he claims to have documentary proof that the defendant misled the City Court. At the author's request, the criminal investigation branch of the Turku police carried out an investigation, but on 27 June 1989, the acting public prosecutor decided not to bring charges. This decision was in turn appealed to the Chancellor of Justice of Finland, who rejected the author's complaint as unfounded. Subsequently the author petitioned the Ministry of Justice, without results.

Complaint

3. The author claims that his wife is a victim of a violation by Finland of articles 2 and 5 of the International Covenant on Civil and Political Rights.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has considered the author's allegations of a violation of articles 2 and 5 of the Covenant and notes that these are general undertakings by States and cannot be invoked by individuals under the Optional Protocol, without reference to other specific articles of the Covenant. The Committee has ex officio examined whether the facts submitted raise potential issues under other articles of the Covenant. It has concluded that they do not. The Committee therefore finds that the communication is incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

T. Communication No. 401/1990, J.P.K. v. the Netherlands (decision of 7 November 1991, adopted at the forty-third session)

Submitted by: J.P.K. (name deleted) (represented by counsel)

Alleged victim: The author

State party: The Netherlands

Date of communication: 11 April 1990 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 11 April 1990 and subsequent correspondence) is J.P.K., a citizen of the Netherlands, born on 28 August 1966, residing in Leiden, the Netherlands. He is a conscientious objector to both military service and substitute civilian service and claims to be the victim of a violation by the Government of the Netherlands of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author did not report for his military service on a specified day. He was arrested and brought to the military barracks, where he refused to obey orders to accept a military uniform and equipment on the grounds that he objected to military service and substitute public service as a consequence of his pacifist conviction. On 21 May 1987, he was court-martialled and found guilty of violating articles 23 and 114 of the Military Penal Code (*Wetboek van Militair Strafrecht*) by the Arnhem Military Court (*Arrondissementskrijgsraad*) and sentenced to six months' imprisonment and dismissal from military service.

2.2 The Public Prosecutor appealed to the Supreme Military Court (*Hoog Militair Gerechtshof*) which, on 9 September 1987, found the author guilty of violating articles 23 and 114 of the Military Penal Code and sentenced him to 12 months' imprisonment and dismissal from military service. On 17 May 1988, the Supreme Court (*Hoge Raad*) rejected the author's appeal.

Complaint

3.1 The author alleges that the proceedings before the courts suffered from various procedural defects, notably that the courts did not correctly apply international law and did not consider, among others, the following conventions and general principles:

(a) The International Covenant on Civil and Political Rights;

(b) The European Convention on Human Rights and Fundamental Freedoms;

(c) The Convention on the Prevention and Punishment of the Crime of Genocide;

(d) The Hague Convention IV on the Laws and Customs of War on Land;

(e) The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Weapons;

(f) The London Charter of the International Military Tribunal at Nuremberg;

(g) The Charter of the International Military Tribunal for the Far East in Tokyo;

(h) The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

(i) The Charter of the United Nations;

(j) The Convention on the Rights and Duties of Neutral States and Persons in Times of War on Land;

(k) United Nations General Assembly resolution 95 (I) of 11 December 1946;

(l) Appendix 2 in conjunction with article 107 of the Treaty establishing a European Defence Community;

(m) United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974;

(n) The 1977 Additional Protocols to the Geneva Convention;

(o) The so-called "de Martens" clause;

(p) The principle that civilian populations may never be targeted during military operations;

(q) The principle that a distinction between civilian populations and combatants and between civilian and military targets be observed at all times;

(r) The principle of proportionality;

(s) The principle that violence which is liable to cause unnecessary suffering is to be avoided.

3.2 The author's defence was based on the argument that, by performing military service, he would become an accessory to the commission of crimes against peace and to the crime of genocide, as he would be forced to participate in the preparation for the use of nuclear weapons. In this context, the author regards the North Atlantic Treaty Organization (NATO) strategies of "flexible response" and "forwarded defence", as well as the military-operational plans based on them, which envisage resort to nuclear weapons in armed conflict, as a conspiracy to commit a crime against peace and/or the crime of genocide.

3.3 According to the author, it is "common knowledge" that the flexible response doctrine targets civilian centres which are held hostage for the eventuality that a conventional attack cannot be contained with conventional weapons. Moreover, if the "flexible response doctrine" is meant to be a credible deterrent, it must imply that political and military leaders are prepared to use nuclear weapons in an armed conflict. The author states that recourse to nuclear weapons is a "completely integrated part" of the military-operational plans based on NATO strategy.

3.4 The Supreme Military Court rejected the author's line of defence. It held that the question of the author's participation in a conspiracy to commit genocide or a crime against peace did not arise, as the international rules and principles invoked by the author do not, in view of the Court, concern the issue of the deployment of nuclear weapons and likewise the conspiracy does not occur, since the NATO doctrine does not automatically imply use without further consultations.

3.5 The author further alleges that the Supreme Military Court was not impartial within the meaning of article 14, paragraph 1, of the Covenant or article 6 of the European Convention on Human Rights. He explains that two thirds of the members of the Supreme Military Court were high-ranking members of the armed forces who, given their professional background, could not be expected to hand down an impartial verdict. In the author's understanding, those with "a chip on their shoulders should not partake (...) the trial of a political adversary".

3.6 The author terms the appointment of the civilian members of the Supreme Military Court "a farce", pointing out that the two "civilian" members of the Supreme Military Court who had been appointed in accordance with the rules of procedure were in fact a rear-admiral and a general during their professional careers who, upon retirement, became the "civilian" members of the Supreme Military Court.

State party's observations and author's clarifications

4.1 The State party notes that a State's right to require its citizens to perform military service, or substitute service in the case of conscientious objectors whose grounds for objection are recognized by the State, is, as such, not contested. Reference is made to article 8, paragraph 3 (c) (ii), of the Covenant.

4.2 The Government takes the view that the independence and impartiality of the Supreme Military Court in the Netherlands is guaranteed by the following procedures and provisions:

(a) The president and the member jurist of the Supreme Military Court are judges in the Court of Appeal (Gerechtshof) in The Hague, and remain president and member jurist as long as they are members of the Court of Appeal;

(b) The military members of the Supreme Military Court are appointed by the Crown. They are discharged after reaching the age of 70;

(c) The military members of the Supreme Military Court do not hold any function in the military hierarchy. Their salaries are paid by the Ministry of Justice;

(d) The president and the members of the Supreme Military Court have to take an oath before they can take up their appointment. They swear or vow to act in a fair and impartial way;

(e) The president and the members of the Supreme Military Court do not owe any obedience nor are they accountable to any one regarding their decisions;

(f) As a rule the sessions of the Supreme Military Court are public.

4.3 The State party points out that national and international judgements have confirmed the impartiality and independence of the military courts in the Netherlands. Reference is made to the Engel Case of the European Court of Human Rights [a] and to the judgement of the Supreme Court of the Netherlands of 17 May 1988.

4.4 With regard to the exhaustion of domestic remedies, the State party claims that the Act on Conscientious Objection to Military Service (Wet Gewetensbezwaren Militaire Dienst) is an effective remedy to insuperable objections to military service. The State party contends that, as the author has not invoked the Act, he has thus failed to exhaust domestic remedies.

4.5 The State party contends that the other elements of the applicant's communication are unsubstantiated. It concludes that the author has no claim under article 2 of the Optional Protocol and that his communication should accordingly be declared inadmissible.

5.1 In his reply to the State party's observations, the author claims that the Conscientious Objection Act has a limited scope and that it may be invoked only by conscripts who meet the requirements of section 2 of the Act. The author rejects the assertion that section 2 is sufficiently broad to cover the objections maintained by "total objectors" to conscription and alternate civilian service. He argues that the question is not whether the author should have invoked the Conscientious Objection Act, but whether the State party has the right to force the author to become an accomplice to a crime against peace by requiring him to do military service.

5.2 The author contends that the State party cannot claim that the European Court of Human Rights has confirmed the impartiality and independence of the Netherlands court-martial procedure (Military Court).

5.3 With regard to the exhaustion of domestic remedies the author explains that he was convicted by the court of first instance and that his appeals were heard and rejected by both the Supreme Military Court and the Supreme Court of the Netherlands. He argues, therefore, that the requirement to exhaust domestic remedies has been fully complied with.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee has ascertained that the case is not under examination elsewhere. The Committee has found that the same matter was considered in 1988-1989 by the European Commission of Human Rights; this does not, however, preclude the Committee's competence, as the State party has made no reservation to that effect.

6.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the State party claims that, as the author failed to apply for substitute civilian service by invoking the Act on Conscientious Objection to Military Service, he has thus failed to exhaust domestic remedies. The Committee is unable to conclude that this Act can be construed as an effective remedy for an individual who objects not only to military service, but also to substitute civilian service. The author has been convicted twice and has appealed to the Supreme Court of the Netherlands. The Committee finds that, in the circumstances, there are no effective remedies within the meaning of article 5, paragraph 2 (b) of the Optional Protocol which the author could still pursue.

6.4 The author has contested the independence and impartiality of the Supreme Military Court. Taking into account the State party's observations, the Committee finds that the author has failed to substantiate sufficiently his contention, for purposes of admissibility, and that this part of the complaint does not constitute a claim under article 2 of the Optional Protocol.

6.5 With regard to the author's objection to the power of the State to require him to do military or substitute national service, the Committee observes that the Covenant does not preclude the institution of compulsory military service by States parties and recalls in this connection the pertinent provision in article 8, paragraph 3 (c) (ii). Consequently, by reference to the requirement to do military service or, for that matter substitute service, the author cannot claim to be a victim of a violation of articles 6 and 7 of the Covenant. Therefore, this part of the communication is inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See European Court of Human Rights, Series A, vol. 22, p. 37, para. 89.

U. Communication No. 403/1990, T.W.M.B. v. the Netherlands (decision of 7 November 1991, adopted at the forty-third session)

Submitted by: T.W.M.B. (name deleted)

Alleged victim: The author

State party: The Netherlands

Date of communication: 11 April 1990 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 11 April 1990 and subsequent correspondence) is T.W.M.B., a citizen of the Netherlands, born on 29 June 1965, residing in Hengelo, the Netherlands. He is a conscientious objector to both military service and substitute civilian service and claims to be the victim of a violation by the Government of the Netherlands of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author did not report for his military service on a specified day. He was arrested and brought to the military barracks, where he refused to obey orders to accept a military uniform and equipment on the ground that he objected to military service and substitute public service as a consequence of his pacifist convictions. On 2 February 1987, he was court-martialled and found guilty of violating articles 23 and 114 of the Military Penal Code (*Wetboek van Militair Strafrecht*) by the Arnhem Military Court (*Arrondissementskrijgsraad*) and sentenced to six months' imprisonment and dismissal from military service.

2.2 Both the author and the Public Prosecutor appealed to the Supreme Military Court (*Hoog Militair Gerechtshof*) which, on 6 May 1987, found the author guilty of violating articles 23, 114 and 150 of the Military Penal Code and article 57 of the Penal Code and sentenced him to 12 months' imprisonment and dismissal from military service. On 9 February 1988, the Supreme Court (*Hoge Raad*) rejected the author's appeal.

Complaint

3.1 The author alleges that the proceedings before the courts suffered from various procedural defects, notably that the courts did not correctly apply international law and did not consider the following conventions and general principles:

(a) The International Covenant on Civil and Political Rights;

(b) The European Convention on Human Rights and Fundamental Freedoms;

(c) The Convention on the Prevention and Punishment of the Crime of Genocide;

(d) The Hague Convention IV on the Laws and Customs of War on Land;

(e) The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Weapons;

(f) The London Charter of the International Military Tribunal at Nuremberg;

(g) The Fourth Geneva Convention relative to the Protection of Civilian Persons in Times of War, of 12 August 1949;

(h) The principle that civilian populations may never be targeted during military operations;

(i) The principle that a distinction between civilian populations and combatants and between civilian and military targets be observed at all times;

(j) The principle of proportionality;

(k) The principle that violence which is likely to cause unnecessary suffering is to be avoided.

3.2 The author's defence was based on the argument that, by performing military service, he would become an accessory to the commission of crimes against peace and of genocide, as he would be forced to participate in the preparation for the use of nuclear weapons. In this context, the author regards the North Atlantic Treaty Organization (NATO) strategies of "flexible response" and "forward defence", as well as the military-operational plans based on them, which envisage resort to nuclear weapons in armed conflict, as a conspiracy to commit a crime against peace and/or the crime of genocide.

3.3 According to the author, the Netherlands army, integrated as it is in the NATO structures, is preparing a nuclear war, which should be considered illegal in the light of international law.

3.4 The Supreme Military Court rejected the author's line of defence. It held that the question of the author's participation in a conspiracy to commit genocide or a crime against peace did not arise, as the international rules and principles invoked by the author do not concern, in the view of the Court, the issue of the deployment of nuclear weapons and likewise the conspiracy does not occur, since the NATO doctrine does not automatically imply use without further consultations.

3.5 The author further alleges that the Supreme Military Court was not impartial within the meaning of article 14, paragraph 1, of the Covenant or article 6 of the European Convention on Human Rights. He explains that the majority of the members of the Supreme Military Court were high-ranking members of the armed forces, who given their professional background, could not be expected to hand down an impartial verdict.

3.6 The author terms the appointment of the civilian members of the Supreme Military Court "a joke", pointing out that the "civilian" members of the Supreme Military Court who had been appointed in accordance with the rules of procedure used to serve in the highest ranks of the armed forces during their professional careers and upon retirement became the "civilian" members of the Supreme Military Court.

State party's observations and author's clarifications

4.1 The State party notes that a State's right to require its citizens to perform military service, or substitute service in the case of conscientious objectors whose grounds for objection are recognized by the State, is, as such, not contested. Reference is made to article 8, paragraph 3 (c) (ii), of the Covenant.

4.2 The Government takes the view that the independence and impartiality of the Supreme Military Court in the Netherlands is guaranteed by the following procedures and provisions:

(a) The president and the member jurist of the Supreme Military Court are judges in the Court of Appeal (*Gerechtshof*) in The Hague, and remain president and member jurist as long as they are members of the Court of Appeal;

(b) The military members of the Supreme Military Court are appointed by the Crown. They are discharged after reaching the age of 70;

(c) The military members of the Supreme Military Court do not hold any function in the military hierarchy. Their salaries are paid by the Ministry of Justice;

(d) The president and the members of the Supreme Military Court have to take an oath before they can take up their appointment. They swear or vow to act in a fair and impartial way;

(e) The president and the members of the Supreme Military Court do not owe any obedience nor are they accountable to any one regarding their decisions;

(f) As a rule the sessions of the Supreme Military Court are public.

4.3 The State party points out that national and international judgements have confirmed the impartiality and independence of the military courts in the Netherlands. Reference is made to the *Engel Case* of the European Court of Human Rights [a] and to the judgement of the Supreme Court of the Netherlands of 17 May 1988.

4.4 With regard to the exhaustion of domestic remedies the State party claims that the Act on Conscientious Objection to Military Service (*Wet Gewetensbezwaren Militaire Dienst*) is an effective remedy to insuperable objections to military service. The State party contends that as the author has not invoked the Act, he has thus failed to exhaust domestic remedies.

4.5 The State party contends that the other elements of the applicant's communication are unsubstantiated. It concludes that the author has no claim under article 2 of the Optional Protocol and that his communication should accordingly be declared inadmissible.

5.1 In his reply to the State party's observations the author claims that the Conscientious Objection Act has a limited scope and that it may be invoked only by conscripts who meet the requirements of section 2 of the Act. The author rejects the assertion that section 2 is sufficiently broad to cover the objections maintained by "total objectors" to conscription and alternate civilian service. He argues that the question is not whether the author should have invoked the Conscientious Objection Act, but whether the State party has the right to force the author to become an accomplice to a crime against peace by requiring him to do military service.

5.2 The author contends that the State party cannot claim that the European Court of Human Rights has confirmed the impartiality and independence of the Netherlands court-martial procedure (Military Court).

5.3 With regard to the exhaustion of domestic remedies the author explains that he was convicted by the court of first instance and that his appeals to the Supreme Military Court and the Supreme Court of the Netherlands were rejected. He argues, therefore, that the requirement to exhaust domestic remedies has been fully complied with.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (a) of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee has ascertained that the case is not under examination elsewhere. The Committee has found that the same matter was considered in 1988-1989 by the European Commission of Human Rights; this does not, however, preclude the Committee's competence, as the State party has made no reservation to that effect.

6.3 With regard to article 5, paragraph 2 (b) of the Optional Protocol, the State party claims that, as the author failed to apply for substitute civilian service by invoking the Act on Conscientious Objection to Military Service, he has thus failed to exhaust domestic remedies. The Committee is unable to conclude that this Act can be construed as an effective remedy for an individual who objects not only to military service, but also to substitute civilian service. The author has been convicted twice and has appealed to the Supreme Court of the Netherlands and the Committee observes that, in the circumstances, there are no effective remedies within the meaning of article 5, paragraph 2 (b) of the Optional Protocol, which the author should still pursue.

6.4 The author has contested the independence and impartiality of the Supreme Military Court. Taking into account the State party's observations, the Committee finds that the author has failed to substantiate sufficiently his contention, for purposes of admissibility, and that this part of the complaint does not constitute a claim under article 2 of the Optional Protocol.

6.5 With regard to the author's objection to the power of the State to require him to do military or substitute national service, the Committee observes that the Covenant does not preclude the institution of compulsory military service by States parties, and refers in this connection to the pertinent provision in article 8, paragraph 3 (c) (ii). Consequently, by reference to the requirement to do military service or, for that matter substitute service, the author cannot claim to be a victim of a violation of articles 6 and 7 of the Covenant. Therefore, this part of the communication is inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See European Court of Human Rights, Series A, vol. 22, p. 37, para. 89.

V. Communication No. 405/1990, M.R. v. Jamaica (decision of 28 July 1992, adopted at the forty-fifth session)

Submitted by:	M.R. (name deleted)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	23 April 1990 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is M.R., a Jamaican citizen serving a 20-year prison term at St. Catherine District Prison, Jamaica. Although he does not invoke any of the provisions of the Covenant, it appears from his submissions that he claims to be a victim of violations by Jamaica of articles 6, 10, 14 and 26 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author states that, on 18 October 1980, he was taken away from his home by three policemen, in the presence of his relatives. He claims that the police officers forced him to board a jeep in the back of which lay the body of a dead man. Instead of bringing him to the Constant Spring Police Station for interrogation, the officers drove him to Morebrook. The arresting officer, one A.M., allegedly said that too many people lived in the neighbourhood to allow the police to kill him outright, upon which the author cried out for help. Subsequently the policemen drove him to an empty lot on Marcus Garvey Drive in Kingston, where they shot him at point blank range; he states that he only survived because he simulated death. He was then taken to a hospital in Kingston, where three bullets were removed from his abdomen.

2.2 The author complains that so as to cover their activities, the policemen charged him with rape and participation in an armed robbery. He claims that, while still in the hospital, he was confronted with the alleged rape victim, whose testimony was in total contradiction with the police's own version of what had happened. In this context, he submits that A.M.'s evidence during the trial was that, on Saturday, 18 October 1980, at about 8 a.m., he received a phone call that a robbery was taking place. Upon arrival at the *locus in quo*, he saw two men and the author, whom he knew. An exchange of gunfire took place during which one of the robbers was hit and fell to the ground; the author ran away and jumped in a gully. The complainant, however, testified that the assailants had worn masks, and that after they had left she went next door to call the police. She did not mention that any shooting had taken place between the robbers and the police, nor that one of the assailants had been killed on the spot.

2.3 With respect to the "fabricated nature" of the evidence against him, the author claims that in November 1980, he was forced by A.M. to pull out some pubic hair. The police also allegedly took some clothes from his room and perforated them, purportedly to show the bullet holes from the shooting at the scene of the crime.

2.4 On 12 January 1981, the author was indicted for robbery with aggravation, illegal possession of firearms and rape. On 28 May 1981, the Gun Court sentenced him to life imprisonment; on separate unspecified accounts, three concurrent 14-year sentences were also imposed on him. The Court of Appeal dismissed his appeal in March 1983. It appears that after the dismissal of the appeal, the Review Board of the Gun Court reduced his sentence to 20 years, to run from August 1981.

2.5 The author submits that, once he had ascertained that he fulfilled all the necessary requirements, he applied for parole in November 1987. As of the end of 1989, there had been no reply from the Parole Board which, according to him, is reluctant to ensure that the documents necessary for release on parole - such as a medical report and the superintendent's report - are prepared and processed in a timely manner. He alleges that he has been discriminated against, as six other inmates who were sentenced after him and who applied for parole after he did were granted parole.

2.6 The author further submits that he is unable to obtain the court documents pertaining to his case, and that his request for legal aid for the purpose of filing a petition for special leave to appeal to the Judicial Committee of the Privy Council was turned down by the Jamaica Council for Human Rights in 1992.

Complaint

3.1 The author contends that he was "framed" by the police, who abducted him from his home, with the intention of killing him. Although article 6 of the Covenant is not specifically invoked, it transpires from the submissions that the author claims a violation of his right to life.

3.2 The author further claims that he had an unfair trial and submits that:

(a) The judge ignored the fact that he had been indicted in the absence of a prior identification parade;

(b) The judge did not investigate the discrepancy between the evidence of A.M. and that of the alleged rape victim;

(c) The author was denied the right to prove his claim that the bullet holes in the clothes did not correspond with the wounds inflicted upon him by the police;

(d) The evidence of the police was that he was shot from a distance of approximately 5 yards, whereas the medical certificate issued by the surgeon of the Kingston Public Hospital clearly indicates that he was shot from point-blank range; a/

(e) No medical expert was called during the trial to corroborate the prosecution's evidence; as to the rape, he complains that he was convicted on purely circumstantial evidence;

(f) The judge ignored the news broadcasted by two radio stations (the RJR and the JBC) on 18 and 19 October 1980, respectively, stating that he was shot in a place different from that where the robber was shot; nor did the judge raise any questions as to why he was not taken to the Constant Spring Police Station in the morning of 18 October 1980;

(g) His lawyer failed to represent him properly during the trial;

(h) His appeal was heard without the presence of a lawyer.

3.3 The author claims that he is subjected to inhuman and degrading treatment in prison. He explains that he suffers from the effects of laparotomies, and that he is refused medical treatment by the prison authorities.

3.4 Finally, he claims to be a victim of discrimination in connection with the denial of his application for parole.

State party's observations and author's comments

4.1 By submission of 3 October 1991, the State party argues that the author's communication is inadmissible on the ground of non-exhaustion of domestic remedies, since his case has not been adjudicated upon by the Judicial Committee of the Privy Council. It points out that legal aid would be available to him under section 3 of the Poor Prisoners' Defence Act. The State party adds that, in addition to his right to petition the Judicial Committee of the Privy Council in respect of his criminal case, the author still has constitutional remedies he may pursue in respect of the alleged violations of his fundamental rights and freedoms.

4.2 In his reply to the State party's observations, the author claims that he was denied the right to seek redress under section 25 of the Jamaican Constitution. He requests the Human Rights Committee to assist him in obtaining the court documents in his case, and to provide him with legal aid for the purpose of exhausting local remedies.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes the State party's contention that the author may still petition the Judicial Committee of the Privy Council for special leave to appeal and that legal aid would be available for this purpose. The Committee further notes that the author's submissions do not show that he petitioned the competent authorities in respect of his claim that he is denied medical treatment in prison. In the circumstances, the Committee concludes that the requirements of article 5, paragraph 2 (b), have not been met.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be transmitted to the State party and to the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ It is not clear from the author's submissions whether the medical certificate, which he obtained in 1982, was presented as evidence in court or not.

W. Communication No. 408/1990, W.J.H. v. the Netherlands (decision of 22 July 1992, adopted at the forty-fifth session)

Submitted by: W.J.H. (name deleted) (represented by counsel)

Alleged victim: The author

State party: The Netherlands

Date of communication: 15 November 1989 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 15 November 1989) is W.J.H., a citizen of the Netherlands, currently residing in Belgium. He claims to be a victim of a violation by the Netherlands of article 14, paragraphs 2 and 6, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author was arrested on 8 December 1983 and kept in pretrial detention until 8 February 1984. On 24 December 1985, the Arnhem Court of Appeal convicted him on a variety of criminal charges, including forgery and fraud. On 17 March 1987, the Supreme Court (*Hoge Raad*) quashed the earlier conviction and referred the case to the 's-Hertogenbosch Court of Appeal, which acquitted the author on 11 May 1988.

2.2 Pursuant to sections 89 and 591a of the Code of Criminal Procedure, the author subsequently filed a request with the 's-Hertogenbosch Court of Appeal for award of compensation for damages resulting from the time spent in pretrial detention and for the costs of legal representation. Section 90, paragraph 1, of the Code of Criminal Procedure provides that, after an acquittal, the Court may grant compensation for reasons of equity. On 21 November 1988, the Court of Appeal rejected the author's request. The Court was of the opinion that it would not be fair to grant compensation to the author, since his acquittal was due to a procedural error; it referred in this context to the judgement of the Arnhem Court of Appeal of 24 December 1985, by which the author was convicted on the basis of evidence that later was found to have been irregularly obtained.

2.3 The author claims that, as no legal remedy for the denial of compensation is available, domestic remedies have been exhausted.

Complaint

3.1 The author claims that the 's-Hertogenbosch Court of Appeal, by its decision of 21 November 1988, violated his right to be considered innocent, pursuant to article 14, paragraph 2, of the Covenant. He submits that, since he was not found guilty by the court, he should not suffer financial damage as a result of the institution of criminal proceedings against him.

3.2 He further contends that the failure to grant him compensation constitutes a violation of article 14, paragraph 6, of the Covenant. He claims that the judgement of the Arnhem Court of Appeal of 24 December 1985 was a final decision within the meaning of article 14, paragraph 6, because it was the judgement of the highest factual instance. In this context, he argues that the subsequent judgements acquitting the author, constitute "new facts" within the meaning of article 14, paragraph 6. He finally claims that his pretrial detention should be considered equivalent to "punishment" in said paragraph.

State party's observations and author's comments

4.1 By submission of 9 July 1991 the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. It submits that the author did not invoke article 14, paragraph 6, of the Covenant when requesting compensation, but only argued that doubt concerning guilt or innocence should not be allowed to influence his right to compensation under article 89 of the Code of Criminal Procedure. The State party further contends that the author could, pursuant to article 1401 of the Civil Code, have demanded compensation in a civil action.

4.2 The State party also argues that article 14, paragraphs 2 and 6, of the Covenant does not apply to the author's case, and that the communication is therefore inadmissible as incompatible with the provisions of the Covenant under article 3 of the Optional Protocol.

4.3 The State party submits that the presumption of innocence, within the meaning of article 14, paragraph 2, does not preclude the imposition of pretrial detention; it refers in this connection to article 9, paragraph 3, of the Covenant. It states that the author did not submit that his detention was unlawful and argues that no provision of the Covenant grants an accused the right to compensation for having undergone lawful pretrial detention, in the event that he is subsequently acquitted.

4.4 The State party further notes that the judgement of the Supreme Court of 17 March 1987 cannot be regarded as a "new fact" within the meaning of article 14, paragraph 6, but that it is the outcome of an appeal and as such a continuation of the proceedings concerning the facts conducted before the lower courts. It also argues that, since an appeal to the Supreme Court is the final domestic remedy, the judgement of the Arnhem Court of Appeal of 24 December 1985 cannot be regarded as a "final decision". Finally, it contends that pretrial detention cannot be considered as punishment within the meaning of article 14, paragraph 6, as it is an initial coercive measure and not imposed as a result of a conviction.

5.1 In his reply to the State party's observations, the author contests that a civil action under article 1401 of the Civil Code is available to him. He submits that a civil claim for compensation is only possible in case of governmental tort and refers in this connection to a judgement of the Supreme Court of 7 April 1989. Since his pretrial, detention is to be considered lawful, the question of tort does not arise in his case. He further submits that it is highly unlikely that a civil court will refute the criminal court's judgement.

5.2 The author also states that he was not obliged to invoke the specific articles of the Covenant during the court proceedings. In this context, he refers to the Committee's views in communication No. 305/1988. a/ He submits that his argument that doubt about guilt or innocence should not be allowed to influence his right to compensation, clearly referred to the presumptio innocentiae, as reflected in article 14, paragraph 2.

5.3 The author submits that the interpretation by the State party of article 14, paragraphs 2 and 6, is too restrictive. He argues that there is no reason to make a distinction between a reversal of a conviction and an acquittal on appeal, as far as compensation for damages is concerned. He further stresses that an accused, who has not been proved guilty according to the law, should not bear the costs incurred in connection with the criminal prosecution. In this connection, he submits that his acquittal was exclusively due to the legal assistance provided by his counsel. He argues that, under these circumstances, the principle of fair procedure implies that the acquitted accused cannot be burdened with the costs of the defence.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 With respect to the author's allegation of a violation of the principle of presumption of innocence enshrined in article 14, paragraph 2, of the Covenant, the Committee observes that this provision applies only to criminal proceedings and not to proceedings for compensation; it accordingly finds that this provision does not apply to the facts as submitted.

6.3 With regard to the author's claim for compensation under article 14, paragraph 6, of the Covenant, the Committee observes that the conditions for the application of this article are:

(a) A final conviction for a criminal offence;

(b) Suffering of punishment as a consequence of such conviction; and

(c) A subsequent reversal or pardon on the ground of a new or newly discovered fact showing conclusively that there has been a miscarriage of justice.

The Committee observes that since the final decision in this case, that of the Court of Appeal of 11 May 1988, acquitted the author, and since he did not suffer any punishment as the result of his earlier conviction of 24 December 1985, the author's claim is outside the scope of article 14, paragraph 6, of the Covenant.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex IX, sect. M, views adopted on 23 July 1990, para. 5.5.

X. Communication No. 439/1990, C.L.D. v. France (decision of 8 November 1991, adopted at the forty-third session)

Submitted by: C.L.D. (name deleted)

Alleged victim: The author

State party: France

Date of communication: 26 December 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 8 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is C.L.D., a French citizen born in 1956 and a resident of Lorient, Bretagne, France. He claims to be a victim of violations by France of articles 2, paragraphs 1 to 3, 14, 26 and 27 of the International Covenant on Civil and Political Rights. In 1987, the author had submitted a communication to the Human Rights Committee, in which he claimed that the refusal of the French postal authorities to issue his postal cheques in Breton violated articles 2, paragraphs 1 to 3, 19, paragraphs 2, 26 and 27 of the Covenant. His previous communication was declared inadmissible on 18 July 1988 on the ground of non-exhaustion of domestic remedies. a/

Facts as submitted by the author

2.1 On 1 October 1988, the author was fined for refusing to pay parking fees in a street of Quimper, Brittany. He requested to appear before the police tribunal of Quimper, which heard him on 28 February 1990. In court, he requested the assistance of an interpreter, or to be allowed to express himself in Breton, which he claims is the language in which he expresses himself with a maximum of ease. The judge refused his request, upon which C.L.D. in turn refused to resume his own defence; he was found guilty and fined 220 French francs.

2.2 The author affirms that the judge's refusal to call an interpreter was discriminatory, and that the judgement incorrectly reflects his own attitude, because it notes that "the accused presented his defence and had the last word" ("*le prévenu a présenté ses moyens de défense, ayant eu la parole le dernier*").

2.3 As to the requirement of exhaustion of domestic remedies, the author claims that the judgement of the police tribunal of Quimper is final. On 14 November 1990, he addressed a letter to President François Mitterrand, requesting a presidential pardon. By letter of 7 December 1990, his request was rejected.

Complaint

3. The author claims that the refusal of the judge to hear him in Breton or to call an interpreter violates his rights under articles 2, paragraphs 1 to 3, 14, 26 and 27 of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has noted the author's claim to be a victim of violations of articles 14 and 26 of the Covenant. It considers that the author has failed to substantiate, for purposes of admissibility, how he was discriminated against within the meaning of article 26 and how his right to a fair trial was violated by the court's refusal to provide him with the services of an interpreter. The Committee reiterates that article 14, paragraph 1, *juncto* paragraph 3 (f), does not imply that the accused be afforded an opportunity to express himself in the language which he normally speaks or in which he expresses himself with a maximum of ease. [b] In this respect, therefore, the author has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

4.3 As to the author's claim of a violation of article 27 of the Covenant, the Committee reiterates that France's "declaration" made in respect of this provision ("in the light of article 2 of the Constitution ... article 27 [of the Covenant] is not applicable so far as the Republic is concerned") is tantamount to a reservation and therefore precludes the Committee from considering complaints against France alleging violations of article 27 of the Covenant. [c]

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] See *Official Records of the General Assembly, Forty-third Session, Supplement No. 40* (A/45/40), annex VIII, sect. E.

[b] See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), vol. II, annex IX, sect. G, para. 10.3, communication No. 219/1986.

[c] See *ibid*., annex X, sect. A, communication No. 220/1987.

Y. Communication No. 446/1991, J.P. v. Canada (decision of 7 November 1991, adopted at the forty-third session)

Submitted by: J.P. (name deleted)

Alleged victim: The author

State party: Canada

Date of communication: 21 February 1991 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is J.P., a Canadian citizen residing in Vancouver, British Columbia, Canada. She claims to be a victim of a violation by Canada of article 18 of the International Covenant on Civil and Political Rights. She is represented by counsel.

Facts as submitted by the author

2.1 The author is a member of the Society of Friends (Quakers). Because of her religious convictions, she has refused to participate in any way in Canada's military efforts. Accordingly, she has refused to pay a certain percentage of her assessed taxes, equal to the amount of the Canadian federal budget earmarked for military appropriations. Taxes thus withheld have instead been deposited with the Peace Tax Fund of Conscience Canada, Inc., a non-governmental organization.

2.2 On 28 August 1987, the author filed a statement of claims in the Federal Court of Canada, Trial Division, for a declaratory judgement that the Canadian Income Tax Act, in so far as it implies that a certain percentage of her assessed taxes goes towards military expenditures, violates her freedom of conscience and religion. On 3 February 1988, the Trial Division of the Federal Court dismissed the action on the ground that the author had no arguable claim. The author appealed to the Federal Court of Appeal which confirmed the earlier decision on 10 October 1989. The author then applied for leave to appeal to the Supreme Court of Canada, which refused leave to appeal on 22 February 1990. Subsequently, following another request by the author, it refused to reconsider its refusal to grant leave to appeal.

2.3 The author requests interim measures of protection pursuant to rule 86 of the Committee's rules of procedure, as the Canadian Internal Revenue Service is threatening to collect the taxes owed by the author.

Complaint

3. The author claims that the payment of taxes which will be used for military and defence purposes violates her freedom of conscience and religion under article 18 of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes that the author seeks to apply the idea of conscientious objection to the disposition by the State of the taxes it collects from persons under its jurisdiction. Although article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article.

4.3 The Human Rights Committee concludes that the facts as submitted do not raise issues under any of the provisions of the Covenant. Accordingly, the author's claim is incompatible with the Covenant, pursuant to article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the author and to her counsel and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Z. Communication No. 448/1991, H.J.H. v. the Netherlands (decision of 7 November 1991, adopted at the forty-third session)

Submitted by: H.J.H. (name deleted)

Alleged victim: The author

State party: The Netherlands

Date of communication: 30 April 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 30 April 1990, is H.J.H., a citizen of the Netherlands born on 12 October 1948, residing in Putten, the Netherlands. He claims to be a victim of a violation by the Netherlands of article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The legislation of the Netherlands governing the registration and circulation of motor vehicles obliges car owners to display, on the windscreen of their cars, a disc proving that the vehicle is duly registered. On 25 June 1985, the author was fined for having displayed a disc that was no longer valid. He appealed to the District Tribunal (*Arrondissementsrechtsbank*) of Zwolle, which declared the earlier decision null and void and adopted another one, which sentenced the author to pay a fine of 75 Netherlands guilders. His appeal to the Supreme Court (*Hoge Raad der Nederlanden*) was dismissed on 3 March 1987.

2.2 The author submitted his case to the European Commission of Human Rights, where he argued that his conviction constituted a violation of the principle of presumption of innocence (art. 6, para. 2, of the European Convention). On 13 July 1989, the European Commission declared his communication inadmissible as "manifestly ill-founded", pursuant to article 27, paragraph 2, of the European Convention.

Complaint

3. The author contends that, by requiring car owners to display a disc on their vehicles, the legislation of the Netherlands is actually forcing them to prove that they are not in violation of the rules governing registration of motor vehicles. The obligation to prove one's innocence constitutes, in the author's opinion, a violation of the presumption of innocence under article 14, paragraph 2, of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not a communication is admissible under the Optional Protocol to the Covenant.

4.2 Taking into account the requirements laid down in articles 2 and 3 of the Optional Protocol, the Committee has examined whether the facts as submitted would raise prima facie issues under any provision of the Covenant and concludes that they do not. The Committee observes that the conditions for declaring a communication admissible include, *inter alia*, that the claims submitted be sufficiently substantiated and do not constitute an abuse of the right of submission. The author's communication reveals that these conditions have not been met.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the author of the communication and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

AA. Communication No. 457/1991, A.I.E. v. the Libyan Arab Jamahiriya (decision of 7 November 1991, adopted at the forty-third session)

Submitted by: A.I.E. (name deleted)

Alleged victim: The author

State party: Libyan Arab Jamahiriya

Date of communication: 18 February 1991

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is A.I.E., an Eyptian citizen born in 1949 in Menofia, Egypt, currently residing in Marseille, France. He claims to be a victim of violations by the Libyan Arab Jamahiriya of his rights under the International Covenant on Civil and Political Rights, without, however, specifying which provisions of the Covenant he considers to have been violated. The Optional Protocol entered into force for the Libyan Arab Jamahiriya on 16 August 1989.

Facts as submitted by the author

2.1 On 17 April 1989, the author was arrested and detained by the Libyan authorities, on suspicion of having collaborated with the French and Egyptian secret services. He was tried before a military court and imprisoned. During captivity he claims to have been tortured and ill-treated. On 15 June 1989, he was brought to the airport and made to board a plane bound for Orly, France. He is currently under constant medical care, which is said to have become necessary because of the trauma suffered by the torture inflicted on him in Libyan Arab Jamahiriya. The French "Commission Technique d'Orientation et de Reclassement Professionnel" and several medical certificates confirm that the author has become incapacited and that he suffers from "affective disorder". His disability is evaluated at 80 per cent.

2.2 The author states that he is in no position to exhaust Libyan remedies given that, upon his release from prison, he was directly brought to the airport and expelled to France, and therefore had no opportunity to avail himself of any Libyan remedies. In France, he adds, he is unable to resort to such remedies.

Complaint

3. Although the author does not invoke any of the provisions of the Covenant, it transpires from his submissions that he claims to be a victim of

a violation of articles 7, 9 and 10 of the Covenant. In particular, he claims that his arrest was arbitrary, as there was no support for the charges against him, and that he was tortured and ill-treated between 17 April and 15 June 1989.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 With regard to the application of the Optional Protocol to the Libyan Arab Jamahiriya, the Committee recalls that it entered into force on 16 August 1989. It observes that the Optional Protocol cannot be applied retroactively and concludes that the Committee is precluded *ratione temporis* from examining acts said to have occurred between 17 April and 15 June 1989, unless these acts continued or had effects after the entry into force of the Optional Protocol, constituting in themselves a violation of the Covenant.

4.3 Accordingly, the Committee finds that it is precluded *ratione temporis* from examining the author's allegations.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

BB. Communication No. 463/1991, D.B.-B. v. Zaire (decision of 8 November 1991, adopted at the forty-third session)

Submitted by: D.B.-B. (name deleted)

Alleged victim: The author

State party: Zaire

Date of communication: 27 March 1991 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 8 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 27 March 1991 and subsequent correspondence) is D.B.-B., a Zairian citizen aged 27, currently residing in Geneva, Switzerland, with refugee status. He claims to be the victim of a violation by Zaire of articles 6, 19 and 26 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author was a student at the University of Lubumbashi, Zaire. He states that, since 1989, the social and the political tensions in Zaire have considerably increased. The main contributing factors were the personality cult and the model of one-party State, which the opposition openly put into question. In order to avoid the risk of a civil war, President Mobutu Sese Seko announced, in April 1990, that Zaire would cease to be a one-party State and that the creation of two new political parties and independent trade unions would be permitted. Moreover, the ruling party was renamed and a new Constitution was adopted in July 1990. However, in spite of the several concessions made by the President with a view to promoting the process of democratization of the country, the repression of the political opposition, including students, has not diminished.

2.2 It is further submitted that, on 11 May 1990, during a night raid at Lubumbashi University campus, several members of the security police dressed in civilian clothes attacked the students and allegedly killed between 100 and 150 of them, injuring hundreds of others. Reportedly, the raid was organized after 30 students accused of being government informers had been seized by other students. The author, who purportedly witnessed the slaughter carried out by the security forces on the campus, fled to Switzerland in September 1990, where he sought and obtained political asylum.

Complaint

3.1 The author claims that, by reason of his ethnic origins - he is from the Province of Kasai - and his participation in the opposition movement to President Mobutu Sese Seko, he is the victim of discriminatory measures and persecution on the part of the Zairian authorities. He further alleges that his private correspondence, as well as his personal contacts, have been systematically interfered with. Moreover, the author asserts that the Dean of Lubumbashi University requested, by letter of 6 June 1990 to the President, that he and his fellow students belonging to the opposition be expelled from the university. In this connection, he states that he and like-minded students had prepared reports on the events of 11 May 1990 intending to submit them to the United Nations Commission on Human Rights, Amnesty International and the European Commission of Human Rights. Allegedly, these reports were seized by the Zairian security forces.

3.2 The author claims that, after his arrival in Switzerland, he has been subjected to threats and intimidations twice, apparently at the hand of members of the Zairian secret police. He has therefore requested the Swiss authorities that measures be taken to protect him.

3.3 As to the requirement of exhaustion of domestic remedies, the author states that, on 7 March 1991, he wrote to the Ministry for Citizens' Rights and Freedoms - a governmental institution which has the responsibility to investigate alleged human rights violations in Zaire - to complain about the events which took place at Lubumbashi University campus on 11 May 1990, and the systematic violations of human rights perpetrated by the Zairian authorities. So far, no follow-up has been given to his complaint.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 With regard to the requirement of the exhaustion of domestic remedies, the Committee observes that the author, by letter of 7 March 1991, filed a complaint to the Zairian Ministry for Citizens' Rights and Freedoms, and that he has not as yet received any reply. It is, however, a well established principle that a complainant must display reasonable diligence in the pursuit of available domestic remedies. In the instant case, the author has not shown the existence of circumstances which would prevent him from futher pursuing the application of domestic remedies in the case. Accordingly, the Committee finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol;

(b) That this decision may be reviewed pursuant to rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

CC. Communication No. 483/1991, J.v.K. and C.M.G.v.K.-S. v. the Netherlands (decision of 23 July 1992, adopted at the forty-fifth session)

Submitted by:	J.v.K. and C.M.G.v.K.-S. (names deleted)
Alleged victims:	The authors
State party:	The Netherlands
Date of communication:	20 November 1991 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 July 1992,

Adopts the following:

Decision on admissibility

1. The authors of the communication (dated 20 November 1991) are Mr. J.v.K. and Mrs. C.M.G.v.K.-S., both citizens of the Netherlands residing in Rotterdam. They claim to be victims of a violation by the Netherlands of article 18 of the Covenant. They are represented by counsel.

Facts as submitted by the authors

2.1 The authors are conscientious objectors to nuclear weapons and have refused the payment of a percentage of their assessed taxes for the year 1983 in so far as this is used for military expenditures, including procurement and maintenance of nuclear weapons. They have deducted 572 Netherlands guilders from their tax payments and have deposited this amount with the Peace Fund in Amersfoort, the Netherlands. They stress that they are willing to pay this amount if the Government creates a special fund for conscientious objectors to such military expenditure.

2.2 The authors submit that they have exhausted domestic remedies. On 22 May 1985, by petition, they contested their assessed taxes. The Tax Inspector dismissed their objections. The authors appealed to the Court in The Hague, which dismissed their appeal on 30 November 1987. By decision of 7 December 1988, the Supreme Court of the Netherlands (*Hoge Raad*) confirmed the Court's decision on the ground that the law did not cover conscientious objection to taxes.

2.3 The authors submit that the Government of the Netherlands should not require taxpayers to finance nuclear weapons and thereby to act against their conscience.

Complaint

3. The authors claim that the obligation to pay taxes for military expenditures that include nuclear weapons violates their freedom of conscience, protected by article 18 of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes that the authors seek to apply the idea of conscientious objection to the disposition by the State of the taxes it collects from persons under its jurisdiction. The Committee already has had the opportunity to observe that, although article 18 of the Covenant certainly protects the right to manifest one's conscience by opposing military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article. [a]

4.3 The Human Rights Committee concludes that the claim as submitted is incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the authors and their counsel and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] See sect. Y above, communication No. 446/1991, decision of 7 November 1991.

DD. Communication No. 486/1992, K.C. v. Canada (decision of 29 July 1992, adopted at the forty-fifth session)

Submitted by: K.C. (name deleted)

Alleged victim: The author

State party: Canada

Date of communication: 24 February 1992 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 24 February 1992) is K.C., a citizen of the United States of America born in 1952, currently detained at a penitentiary in Montreal and facing extradition to the United States. He claims to be a victim of violations by Canada of articles 6 *juncto* 26 and 7 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 On 27 February 1991, the author was arrested at Laval, Quebec, for theft, a charge to which he pleaded guilty. While in custody, the judicial authorities received from the United States a request for his extradition, pursuant to the 1976 Extradition Treaty between Canada and the United States. The author is wanted in the State of Pennsylvania on two charges of first-degree murder, relating to an incident that took place in Philadelphia in 1988. If convicted, the author could face the death penalty.

2.2 Pursuant to the extradition request of the United States Government and in accordance with the Extradition Treaty, the Superior Court of Quebec ordered the author's extradition to the United States. Article 6 of the Treaty provides:

> "When the offence for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offence, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed or, if imposed, shall not be executed."

Canada abolished the death penalty in 1976, except in the case of certain military offences.

2.3 The power to seek assurances that the death penalty will not be imposed is conferred on the Minister of Justice pursuant to section 25 of the 1985 Extradition Act.

2.4 Concerning the course of the proceedings against the author, it is stated that a habeas corpus application was filed on his behalf on 13 September 1991; he was represented by a legal aid representative. The application was dismissed by the Superior Court of Quebec. The author's representative appealed to the Court of Appeal of Quebec on 17 October 1991.

2.5 Counsel requests the Committee to adopt interim measures of protection because extradition of the author to the United States would deprive the Committee of its jurisdiction to consider the communication and the author to pursue his communication properly.

Complaint

3. The author claims that the order to extradite him violates article 6 juncto 26 of the Covenant; he alleges that the way death penalties are pronounced in the United States generally discriminates against Black people. He further alleges a violation of article 7 of the Covenant, in that he, if extradited and sentenced to death, would be exposed to "the death-row phenomenon", i.e. years of detention under harsh conditions, awaiting execution.

State party's observations

4. On 30 April 1992, the State party informed the Committee of the author's situation in regard to remedies which are either currently being pursued by him before Canadian courts or which are still available for him to pursue. It indicates that the Court of Appeal of Quebec is seized of the matter, and that, if it rendered a decision unfavourable to the author, he could appeal to the Supreme Court of Canada. In the event of an unfavourable decision there, he could still "petition the Minister of Justice to seek assurances under the Extradition Treaty between Canada and the United States that if surrendered, the death penalty would not be imposed or carried out. Counsel for K.C. has in fact indicated that, once remedies before the courts have been exhausted, he will be making representations to the Minister regarding assurances. A review of the Minister's decision is available in the Superior Court of Quebec on habeas corpus with appeals again to the Court of Appeal of Quebec and the Supreme Court of Canada or on application to the Federal Court Trial Division with appeals to the Federal Court of Appeal and the Supreme Court of Canada. Consequently, there is no basis for [K.C.]'s complaint as he has not exhausted all remedies available in Canada and has several opportunities to further contest his extradition."

Issues and proceedings before the Committee

5.1 On 12 March 1992 the Special Rapporteur on New Communications requested the State party, pursuant to rule 86 of the Committee's rules of procedure, to defer the author's extradition until the Committee had had an opportunity to consider the admissibility of the issues placed before it.

5.2 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication if the author has not exhausted all available domestic remedies. In the light of the information provided by the State party, the Committee concludes that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol;

(b) That the Committee's request for interim measures pursuant to rule 86 of the rules of procedure is set aside;

(c) That, in accordance with rule 92, paragraph 2, of the Committee's rules of procedure, the author may, after exhausting local remedies, bring the issue again before the Committee;

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

EE. Communication No. 491/1992, J.L. v. Australia (decision of 28 July 1992, adopted at the forty-fifth session)

Submitted by: J.L. (name deleted)

Alleged victim: The author

State party: Australia

Date of communication: 7 August 1991 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is J.L., an Australian citizen residing in Moorabbin, Victoria, Australia. He claims to be a victim of violations by Australia of article 14 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Australia on 25 December 1991.

Facts as submitted by the author

2.1 The author is a solicitor; in the State of Victoria, the practice of law is regulated by the Legal Profession Practice Act of 1958. Pursuant to section 83 (1), no one may practise law unless he or she is duly qualified and holds a certificate issued by the Law Institute of Victoria. Under the Act, two fees must be paid before a practising certificate is issued: an annual practising fee and a compulsory professional indemnity insurance premium. Pursuant to section 90, anyone without a practising certificate is not qualified to practise law.

2.2 Section 88 (2) (c) stipulates that the rules determining a practising fee for solicitors have no effect unless approved by the Chief Justice. The latter may also approve the regulations concerning the professional indemnity insurance. In 1985, the Chief Justice approved a new insurance scheme proposed by the Law Institute, under which its Solicitors' Liability Committee was entitled to henceforth determine the insurance premium.

2.3 In 1986, J.L. refused to pay the increased premium for the new insurance scheme, since he considered it to be invalid. He claimed that, apart from being a tax which had to be determined by Parliament, the Institute had not sought the necessary recommendations from its members for the new rules, nor had it complied with the so-called regulatory impact statement requirements of the Subordinate Legislation Act of 1962.

2.4 The Institute refused to issue the author's practising certificate; the latter did, however, continue to practise. On 13 May 1986, the Secretary of the Institute obtained an injunction against J.L. pursuant to section 90 (7) of the Act, which stipulates that:

> "On application made ... by the secretary ... of the Institute, the Supreme Court may, if it is satisfied that an unqualified person is acting or practising as a solicitor ..., make an order restraining that person from so acting or practising."

2.5 J.L. ignored the injunction. On 21 May 1986, the Chief Justice sentenced him to three weeks' imprisonment for contempt of court. The author appealed the injunction and the committal order. On 10 April 1987, the full Court dismissed the appeal against the committal order but set aside the injunction, *inter alia*, on the ground that the members of the Institute had not recommended the new insurance regulations.

2.6 Under a subsequent amendment to the Act, the Solicitor's Liability Committee may determine the insurance premium with the approval of the Institute's Council and without the necessary recommendations from the Institute's members. Notwithstanding, the author, maintaining that the fee constituted a form of taxation that would have to be determined by Parliament, continued to practise without the requisite certificate.

2.7 Throughout 1988, the author refused to pay his practising fees to the Institute, complaining that the Institute used the fees "improperly" to finance private activities, rather than for administrative or regulatory purposes. He contended that, although the Act did not specify the purpose for which the fee should be used, it was a statutory fee and should accordingly be used solely for such purposes. He further claimed that, as the fee was also fee for membership in the Institute, he was forced to become a member in a union.

2.8 On 11 and 15 March 1988, another judge of the Supreme Court, upon application of the Law Institute, issued another injunction against J.L. He ruled that the practising fee was commensurate to the Institute's statutory functions and that the insurance premium was not a "tax", but a contribution to the governance and good order of the profession. The order of 15 March 1988 carried a stay until the "final determination of an appeal by the applicant or further order". An appeal against the order of 11 March was rejected by the full Court on 8 December 1988. The High Court refused leave to appeal from the court's judgement on 13 October 1989. No application to modify or discharge the orders was made by the Law Institute.

2.9 On 30 November 1990, a Supreme Court judge again found the author in contempt of court. The author argued that a stay of the order of 15 March 1988 was still valid, as he had not appealed against it. The judge, however, held that the stay had expired with the High Court's denial of leave to appeal. On 7 December 1990, the judge fined the author for having failed to obtain practising certificates for 1989 and 1990. The full Court denied leave to appeal against this order on 15 March 1991. Upon application from the Institute, the author's name was struck off the roll of solicitors and barristers of the Supreme Court on 11 June 1991. In addition, the author was again fined for contempt of court, with the proviso that, if the fine was not paid within 30 days, he would be placed under arrest.

2.10 The author did not appeal against this order, nor did he pay the fine. On 1 September 1991, he was taken into custody. Upon application of the Institute, a further order was issued on 2 October 1991, by which the author was to remain in custody until 29 November 1991. Applications for habeas corpus and bail were dismissed.

Complaint

3.1 The author complains that he has been denied proceedings before an independent and impartial tribunal. He alleges that the Supreme Court of Victoria is institutionally linked to the Law Institute by means of section 88 (2) (c) of the Legal Profession Practice Act (see para. 2.2 above); the judges' rulings are said to be partial because of their "special relationship" with the Institute. It is further submitted that the judges of the Supreme Court simply refused to rule on the issue of whether the practising fee and insurance premium were valid.

3.2 The author claims that his detention was unlawful, as he was detained for refusing to pay a fine that in fact exceeded the maximum fine envisaged by the Act. He contends that the court had no jurisdiction to entertain the case against him, as there was no court rule authorizing a committal order for an indefinite period until the payment of the fine.

3.3 With respect to the date of entry into force of the Optional Protocol for Australia, it is claimed that the violation of article 14 of the Covenant has continuing effects, in that the author remains struck off the roll of solicitors of the Supreme Court, without any prospect of being reinstated.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has noted the author's claim that his detention between 1 September and 29 November 1991 was unlawful. It observes that this event occurred prior to the entry into force of the Optional Protocol for Australia (25 December 1991), and that it does not have consequences which in themselves constitute a violation of any of the provisions of the Covenant. Accordingly, this part of the communication is inadmissible *ratione temporis*. As to the author's contention that he was denied a fair and impartial hearing, the Committee notes that although the relevant court hearings took place before 25 December 1991, the effects of the decisions taken by the Supreme Court continue until the present time. Accordingly, complaints about violations of the author's rights allegedly ensuing from these decisions are not in principle excluded *ratione temporis*.

4.3 As to the author's contention that he was forced to contribute to the activities of the Law Institute by paying a practising fee as well as an insurance premium, the Committee notes that the regulation of the activities of professional bodies and the scrutiny of such regulations by the courts may raise issues in particular under article 14 of the Covenant. More particularly, the determination of any rights or obligations in a suit at law in relation thereto entitles an author to a fair and public hearing. It is in principle for States parties to regulate or approve the activities of professional bodies, which may encompass the provision for insurance schemes. In the instant case, the fact that the practise of law is governed by the Legal Profession Practice Act of 1958 and that the rules providing for a practising fee and a professional indemnity insurance will have no effect unless approved by the Chief Justice does not lead in itself to the conclusion that the court, as an institution, is not an independent and impartial tribunal. Furthermore, the entitlement of the court, under Australian law, to commit the author for contempt of court for failing to respect an injunction not to practise law without having paying practising fee and the insurance premium, is a matter of domestic law and beyond the Committee's competence to investigate.

4.4 Accordingly, the communication is inadmissible as incompatible with the provisions of the Covenant, within the meaning of article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

ANNEX XI

List of documents issued during the reporting period

CCPR/C/28/Add.14	Second periodic report of the Islamic Republic of Iran
CCPR/C/37/Add.14	Second periodic report of Venezuela
CCPR/C/42/Add.12	Second periodic report of the United Republic of Tanzania
CCPR/C/51/Add.4	Second periodic report of Peru
CCPR/C/51/Add.5	Second periodic report of Peru (additional information)
CCPR/C/51/Add.6	Second periodic report of Peru (supplementary report)
CCPR/C/52/Add.9	Third periodic report of Yugoslavia
CCPR/C/57/Add.3	Second periodic report of Belgium
CCPR/C/57/Add.4	Second periodic report of Luxembourg
CCPR/C/57/Add.5	Second periodic report of Afghanistan
CCPR/C/58/Add.13	Third periodic report of Poland (additional information)
CCPR/C/64/Add.7	Third periodic report of Hungary
CCPR/C/68/Add.1	Initial report of the Republic of Korea
CCPR/C/68/Add.2	Initial report of Burundi
CCPR/C/70/Add.1	Third periodic report of Japan
CCPR/C/70/Add.2	Third periodic report of Norway
CCPR/C/2/Rev.3	Reservations, declarations, notifications and objections relating to the International Covenant on Civil and Political Rights and the Optional Protocols thereto: note by the Secretary-General
CCPR/C/5/Rev.1	Guidelines regarding the form and contents of initial reports from States parties
CCPR/C/20/Rev.1	Guidelines regarding the form and contents of periodic reports from States parties

CCPR/C/21/Rev.1/Add.3	General comments adopted by the Human Rights Committee under article 40, paragraph 4, of the International Covenant on Civil and Political Rights - General Comments Nos. 20 (44) (article 7) and 21 (44) (article 40)
CCPR/C/74	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1992: note by the Secretary-General
CCPR/C/75	Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1992: note by the Secretary-General
CCPR/C/76	Consideration of reports submitted by States parties under article 40 of the Covenant - third periodic reports of States parties due in 1992: note by the Secretary-General
CCPR/C/73	Provisional agenda and annotations - forty-third session
CCPR/C/77	Provisional agenda and annotations - forty-fourth session
CCPR/C/78	Provisional agenda and annotations - forty-fifth session
CCPR/C/SR.1092-1120 and corrigendum	Summary records of the forty-third session
CCPR/C/SR.1121-1148	Summary records of the forty-fourth session
CCPR/C/SR.1149-1176 and corrigendum	Summary records of the forty-fifth session
HRI/CORE/1	Preparation of the initial parts of State party reports ("core documents") under the various international human rights instruments: note by the Secretary-General
HRI/CORE/1/Add.1	Core document forming an integral part of the reports of States parties - Belgium
HRI/CORE/1/Add.2	Core document forming an integral part of the reports of States parties - Spain
HRI/CORE/1/Add.4	Core document forming an integral part of the reports of States parties - Sweden
HRI/CORE/1/Add.5	Core document forming an integral part of the reports of States parties - United Kingdom of Great Britain and Northern Ireland

HRI/CORE/1/Add.6	Core document forming an integral part of the reports of States parties - Norway
HRI/CORE/1/Add.7	Core document forming an integral part of the reports of States parties - Ecuador
HRI/CORE/1/Add.8	Core document forming an integral part of the reports of States parties - Austria
HRI/CORE/1/Add.9	Core document forming an integral part of the reports of States parties - Uruguay
HRI/CORE/1/Add.10	Core document forming an integral part of the reports of States parties - Luxembourg

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